## TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. - 17

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER, APPELLANTS,

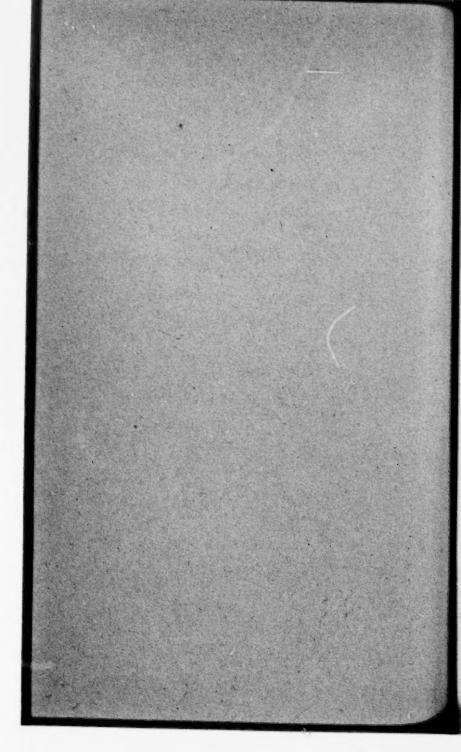
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SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 30, 1911.

(22,991)



## (22,991)

# SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1913.

No. 155.

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER, APPELLANTS,

28.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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## In the Court of Appeals of the District of Columbia.

No. 2265.

Alexander R. Magruder et al., Appellants, Samuel A. Drury et al.

Supreme Court of the District of Columbia.

In Equity. No. 20037.

ALEXANDER RICHARDSON MAGRUDER and ISABEL RICHARDSON MAGRUDER, Plaintiffs,

George F. Richardson, Samuel A. Drury and Samuel Maddox, Trustees, Defendants.

UNITED STATES OF AMERICA.

District of Columbia, 88:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed December 30, 1898.

In the Supreme Court of the District of Columbia.

In Equity. No. 20037.

ALEXANDER RICHARDSON MAGRUDER, ISABEL RICHARDSON MAGRUDER, Infants, by Their Next Friend, ALEXANDER F. MAGRUDER, Plaintiffs,

George F. Richardson, Samuel A. Drury, Defendants.

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding an Equity court for said District:

The plaintiffs. Alexander Richardson Magruder and Isable Richardson Magruder, bring this their bill of complaint, by their next 1—2265A

friend, Alexander F. Magruder, against the above-named defendants,

and thereupon they aver and show:

1. That they are infants, under the age of twenty-one years, the said Alexander having been born on the 17th day of January, A. D. 1883, and the said Isabel on the 20th day of April. A. D. 1886, and reside in the District of Columbia.

2. That defendant George F. Richardson is a citizen of the United States, commorant in the County of Middlesex. State of Massachusetts, and is sued as one of the executors of the will of the late William A. Richardson, and as one of the

trustees appointed by said will.

3. That defendant Samuel A. Drury is a citizen of the United States, commorant in the District of Columbia, and is sued as one of the executors of the will of the late William A. Richardson, and

as one of the trustees appointed by said will

4. That said William A. Richardson departed this life in the District of Columbia, on the 19th day of October. A. D. 1896, having first made and executed a last will and testament, bearing date the 9th day of August, A. D. 1895. A copy of said will is herewith filed, marked "Compl'ts' Exhibit. No. 1", and it is prayed that the same may be read at the hearing of this cause and taken and considered a part hereof.

5. That said William A. Richardson left him surviving as sole heir at law and next of kin a daughter. Isabel, intermarried with

said Alexander F. Magruder.

6. That said Isabel departed this life, intestate, in the District of Columbia, on or about the 4th day of April, A. D. 1898, leaving her surviving as sole heirs at law and next of kin these plaintiffs, who have always resided in the said District.

 That the said William A. Richardson was on or about the 11th day of April, A. D. 1872, and for some years prior thereto had been, a Judge of Probate in the County of Middlesex, State of

3 Massachusetts, which said office he resigned on said date to become Assistant Secretary of the United States Treasury at or about said time he moved with his family to said city of Washington, in said District, which he ever thereafter till his death made his home. In the interval, he filled offices under the United States government as follows:

Secretary of the Treasury from the 17th day of March, A. D.

1873, to the second day of June. A. D. 1874:

Associate Justice of the Court of Claims from July 2, A. D., 1874, to January 20, A. D., 1885, and Chief Justice of the Court of Claims from January 20, A. D., 1885, to the date of his death.

During all the time aforesaid, to wit, from the 11th day of April, A. D., 1872, till the 19th day of October, A. D., 1896, he continued to live with his family in the said city of Washington, which he repeatedly declared was to be his home for the rest of his life. After so coming to said city of Washington, in the year 1872, he did not exercise any of the rights of citizenship in the State of Massachusetts, and did not even return to said State more than a few times, and then only for short visits.

In September, A. D. 1876, he bought a family burial lot in Oak Hill Cemetery, in the District of Columbia, and had his wife interred therein in that year. At his request, his body was also interred in said lot.

Early in the year 1885, the said William A. Richardson bought an expensive lot of ground situated at the corner of 17th and H

Streets, N. W., in the said city of Washington, known as part of Square 127, which he shortly thereafter improved by the erection thereon of a handsome dwelling-house at a cost, approximately, of \$35,000. In this house, he lived uninterruptedly till his death. His daughter, the said I-abel Magruder, mother of these plaintiffs, also made said house her home, as have these plaintiffs, since her death, by permission of the defendants.

As further evidence of his intention to make said sity of Washington his home, the said William A. Richardson, shortly after his appointment as Associate Justice of the Court of Claims, began to close out his investments in the State of Massachusetts, and invested all of his money in the city of Washington, principally in real estate securities. And at the time of his death, as these plaintiffs are informed and believe, and so believing charge and aver and offer to prove, the said William A. Richardson had no property whatever in said State, except one or two parcels of unproductive real estate of trifling value, and no other property subject to the jurisdiction of the Courts of said State.

8. That said William A. Richardson was at the time of his death seized of other real estate in the city of Washington, known and

designated as follows:

Lot 119, Square 981; Lot No. 37, Square 812, and part of lots 10 and 12, square 214; and possessed of personal estate consisting principally of loans on real estate security in said city, aggregating upwards of \$300,000.

That notwith-tanding all of said facts and circumstances, indicating that the said William Λ. Richardson had abandoned his residence in the State of Massachusetts, and could not in

law or in fact be longer considered a citizen or resident of said State, the defendants, as executors of said will, yielding to a recital at the commencement thereof to the effect that the testator was "a citizen and inhabitant of Cambridge in the County of Middlesex in the Commonwealth of Massachusetts", caused the said will to be duly filed for record and probated in one of the Prol ate Courts of said county, and procured letters testamentary of said estate to be issued to them out of said Court, although the last domicile and residence of said deceased was in the District of Columbia, and substantially all of his property in said District.

10. That complainants are advised by counsel, and believe and so believing charge and aver that said Court of Probate was without jurisdiction in the premises, and has not and cannot have any authority or control whatever over the said estate. And these coupplainants fear that, unless they are protected in their rights, they will be subjected to inheritance and other taxes and dues in said State, although neither they, these plaintiffs, nor their said mother.

ever had the protection of the laws of said State, or enjoyed any of the benefits of residence therein or citizenship thereof, and although their said grandfather many years ago gave up his residence in said State and established his permanent residence and home in the District of Columbia as hereinbefore more fully shown; and although no part of the property of these plaintiffs so devised to them in and by said will is located in said State or protected by its laws.

other show that under and by virtue of the powers and authority in said will contained, the defendants, as executors thereof and trustees thereunder, will have full and absolute control over said property and estate until the plaintiffs attain the ages of twenty-three and twenty-six years, respectively, and that they will receive and disburse large sums of money for the objects and purposes in said will specified. And these plaintiffs are advised that they are entitled to have defendants account in this Honorable Court for all the property and estate passing under said will, from time to time, and as often as may be necessary, and that such an accounting will be a protection to the defendants in the execution of their trust.

12. And these plaintiffs further show, on information and belief, that the said George F. Richardson has filed in the Probate Court out of which letters testamentary issued to defendants, as hereinbefore shown, his resignation both as executor and trustee under

said will.

To the end, therefore, that the plaintiffs may have that relief which can only be had in a Court of Equity, they

## Pray.

1. That the said George F. Richardson and Samuel A. Drury may be made parties defendant to this bill, and the said Samuel A. Drury be served with process requiring him to be and appear in this Honorable Court by some day to be in said process named, to answer the propriets and shide by and perform such and a process.

the premises and abide by and perform such order or decree as may be passed therein; and for as much as the said George F. Richardson is not a resident of the District of Columbia.

that an order of publication may be passed giving notice to him of the substance and object of this bill, and warning him to appear in this Court, in person, or by solicitor, on or before a certain day to answer the premises and show cause, if any he has, why a decree ought not to be passed as prayed.

2. That the last will and testament of the said William A. Richardson may be construed and the rights of these plaintiffs thereunder escertained and fixed by the decree of this Honorable Court.

3. That an account may be taken of all the property and estate which have been received by the defendants as executors and trustees under said will, and which, without wilful default, they might have received since they qualified as such executors, without abatement for charges or taxes, if any, claimed by the State of Massachusetts.

4. That said defendants, as executors and trustees as aforesaid, be required to file accounts from time to time and as often as may be necessary, showing what moneys they receive and the disposition thereof

5. That, if it be true, as these plaintiffs are informed, that the said George F. Richardson has filed his resignation as executor and trustee under said will, and refuses or declines to further act as such, some fit and proper person may be appointed in his place and stead to carry out and perform the wishes and intent of the said William

A. Richardson as set forth in his last will and testament. And for such other and further relief as the nature of the case may require and to the Court may seem fit and proper.

And complainants will ever pray, etc.

A. F. MAGRUDER

SAM'L MADDOX.

Solicitor for Complainants.

DISTRICT OF COLUMBIA. 88:

Before me, the undersigned, personally appeared Alexander F. Magruder, who being first duly sworn according to law, deposes and savs:

I have read over the foregoing bill of complaint, by me subscribed, and know the contents thereof; the matters and things therein stated as of my own knowledge are true, and the matters and things stated on information and belief, I believe to be true.

A. F. MAGRUDER.

Subscribed and sworn to before me this 28th day of December, A. D. 189-.

J. R. YOUNG, CTA. By R. J. MEIGS, JR., Ass't Cl'k.

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Amended Bill.

Filed March 6, 1899.

In the Supreme Court of the District of Columbia.

In Equity. No. 20037.

ALEXANDER RICHARDSON MAGRUDER, ISABEL RICHARDSON MAGRUder, Infants, by Their Next Friend, Alexander F. Magruder, Plaintiffs.

Samuel A. Drury, Defendant,

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding an Equity Court for said District

The plaintiffs, Alexander Richardson Magruder and Isabel Rich ardson Magruder, bring this their amended bill of complaint, by their next friend, Alexander F. Magruder, against the above named

defendant, and thereupon they aver and show:

 That they are infants, under the age of twenty-one years, the said Alexander having been born on the 17th day of January, A. D. 1883, and the said Isabel on the 20th day of April, A. D. 1886, and reside in the District of Columbia.

2. That defendant Samuel A. Drury is a citizen of the United States, commorant in the District of Columbia, and is sued as one of the executors of the will of the late William A. Richardson, and as one of the trustees appointed by said

will

3. That said William A. Richardson departed this life in the District of Columbia, on the 19th day of October, A. D. 1896, having first made and executed a last will and testament, bearing date the 9th day of August, A. D. 1895. A copy of said will was filed as an Exhibit to the original bill of complaint in this cause, marked "Complainant's Exhibit No. 1" and it is prayed that the same may be read at the hearing of this cause and taken and considered a part hereof.

 That said William A. Richardson left him surviving as sole heir at law and next of kin a daughter, Isabel, intermarried with said

Alexander F. Magruder.

5. That said Isabel departed this life, intestate, in the District of Columbia, on or about the 4th day of April, A. D. 1898, leaving her surviving as sole heirs at law and next of kin these plaintiffs, who

have always resided in the said District.

6. That the said William A. Richardson was, on or about the 11th day of April, A. D. 1872, and for some years prior thereto had been, a Judge of Probate in the County of Middlesex, State of Massachusetts, which said office he resigned on said date to become Assistant Secretary of the United States Treasury. At or about said time he moved with his family to said city of Washington, in said District, where he ever thereafter till his death made his home

In the interval, he filled offices under the United State-

11 government as follows:

Secretary of the Treasury from the 17th day of March.

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A. D. 1873, to the second day of June, A. D. 1874;

Associate Justice of the Court of Claims from July 2, A. D. 1874, to January 20, A. D. 1885, and Chief Justice of the Court of Claims

from January 20, A. D. 1885, to the day of his death,

During all the time aforesaid, to wit, from the 11th day of April, A. D. 1872, till the 19th day of October, A. D. 1896, he continued to live with his family in the said city of Washington, which he repeatedly declared was to be his home for the rest of his life. After so coming to said city of Washington, in the year 1872, he did not exercise any of the rights of citizenship in the State of Massachusetts, and did not even return to said State more than a few times, and then only for short visits.

In September, A. D. 1876, he bought a family burial lot in Oak Hill Cemetary, in the District of Columbia, and had his wife interred therein in that year. At his request, his body was also interred in said lot

Early in the year 1885, the said William A. Richardson bought an expensive lot of ground situated at the corner of 18th and H streets, X. W., in the said city of Washington, known as part of Sprare 127, which he shortly thereafter improved by the erection thereon of a handsome dwelling-house at a cost, approximately, of 825,000. In this house, he lived uninterruptedly till his death

His daughter, the said Isabel Magruder, mother of the-e 1.7 plaintiffs, also made said house her home, as have these plaintiffs, since her death, by permission of the defendant and George F. Richardson, the other executor and trustee named

in said will

As further evidence of his intention to make said city of Washington his home, the said William A. Richardson, shortly after his appointment as Associate Justice of the Court of Claims, began to close out his investments in the State of Massachusetts, and invested all of his money in the city of Washington, principally in real estate securities. And at the time of his death, as these plaintiffs are informed and believe, and so believing charge and aver and offer to prove, the said William A. Richardson had no property whatever in said State, except one or two parcels of improductive real estate of triffing value, and no other property subject to the jurisdiction of the Courts of said State.

7. That said William A. Richardson was at the time of his death seized of other real estate in the city of Washington, known and

designated as follows

Lot 119, Square 981; Lot No. 37, Square 812, and part of lots 10 and 12, square 214; and possessed of personal estate consisting principally of loans on real estate security in said city, aggregating upwards of \$300,000

8. And these plaintiffs charge, on information and belief, that since the death of the said William A. Richardson several deeds of trust intended to secure the payment of certain notes belonging to his estate, have been foreclosed, and the real estate by

them conveyed bought in by defendant for and on account of said estate upon which taxes as fixed by the laws in force in said District are now charged and paid out of the estate of said deceased.

9. That notwithstanding all of said facts and circumstances, indieating that the said William A Richardson had abandoned his residence in the State of Massachusetts, and could not in law or in fact be longer considered a citizen or resident of said State, the defendant and said George F. Richardson, as executors of said will. vielding to a recital at the commencement thereof to the effect that the testator was "a citizen and inhabitant of Cambridge in the County of Middlesex in the Commonwealth of Massachusetts" caused the said will to be duly filed for record and probated in one of the Probate Courts of said county, and procured letters testamentary of said estate to be issued to them out of said Court, although the last domicile and residence of said deceased was in the District of Columbia, and substantially all of his property in said District.

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10. That complainants are advised by counsel, and believe, and so believing charge and aver that said Court of Probate was without jurisdiction in the premises, and has not and can not have any authority or control whatever over the said estate. And these complainants fear that, unless they are protected in their rights, they will be subjected to inheritance and other taxes and dues in said

State, although neither they, these plaintiffs, nor their said mother, ever had the protection of the laws of said State, or enjoyed any of the benefits of residence therein or citizen-

ship thereof, and although their said grandfather many years ago gave up his residence in said State and established his permanent residence and home in the District of Columbia as hereinbefore more fully shown; and although no part of the property of these plaintiffs so devised to them in and by said will is located in said

State or protected by its laws.

11. And these plaintiffs further aver and show that although the said George F. Richardson qualified as one of the executors of said will, at or about the time of its probate in the said County of Middlesex, yet he did not and has not undertaken to perform any duty as such executor, beyond attending to the routine proceedings in said Court. To the contrary thereof these plaintiffs aver that the entire care, custody and management of said estate have devolved upon the defendant who from the date of said probate has had in his keeping, and now has, all the money, securities and other assets of said estate, except only the household furniture belonging thereto, and has disbursed all moneys paid out and expended in and about the settlement of said estate and for the maintenance and support of these petitioners.

12. And these petitioners further show that under and by virtue of the powers and authority in said will contained, the executors thereof and trustees thereunder will have full and absolute control

over said property and estate until the plaintiffs attain the ages of twenty-three and twenty-six years, respectively, and

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that they will receive and disburse large sums of money for the objects and purposes in said will specified. And these plaintiffs are advised that they are entitled to an accounting in this Honorable Court for all the property and estate passing under said will, from time to time, and as often as may be necessary, and that such an accounting will be a protection to the defendant in the execution of his trust.

13. That said George F. Richardson has declined to act as trustee ander said will, by an instrument in writing, addressed to the Honorable, the Judge of said Probate Court, a certified copy whereof is herewith filed, marked "Complainant's Exhibit No. 2", which it is prayed may be read at the hearing of this cause and taken and considered a part hereof.

To the end, therefore, that the plaintiffs may have that relief

which can only be had in a Court of Equity they pray:

1 That the said Samuel A. Drury may be made party defendant to this amended bill, and duly served with process requiring him to be and appear in this Honorable Court by some day to be in said

process named, to answer the premises and abide by and perform such order or decree as may be passed therein.

That the said last will and testament of the said William A Richardson may be construed and the rights of these plaintiffs thereunder ascertained and fixed by the decree of this Honorable Court.

3. That an account may be taken of all the property and assets which have been received by the defendant as executor and trustee under said will, and which, without wilful default, he might have received, since he qualified as such executor, without any abatement for charges, assessments or taxes, if any, claimed and asserted by the State of Massachusetts against said estate.

4. That said defendant, as executor and trustee as aforesaid, be required to file accounts from time to time and as often as may be necessary, showing what moneys he has received, and the disposition

thereof.

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5. That some fit and proper person may be appointed in the place and stead of the said George F. Richardson to carry out and perform the wishes and intent of the said deceased, as set forth in his last will and testament.

6. That in the meantime the defendant may be restrained, by an order issuing out of and under the seal of this Honorable Court, from paying out any money in his hands belonging to said estate as for dues, taxes, or other charges to the said State of Massachusetts.

And for such other and further relief as the nature of the case may require and to the Court may seem fit and proper.

And petitioners will ever pray, etc.

## ALEXANDER F. MAGRUDER.

SAM'L MADDOX. Solicitor for Complainants.

#### 17 DISTRICT OF COLUMBIA, set:

Before me, the undersigned, personally appeared Alexander F. Magruder, who being first duly sworn according to law, deposes and says:

I have read over the foregoing bill, by me subscribed, and know the contents thereof. The matters and things therein stated as of my own knowledge are true, and the matters and things stated on information and belief. I believe to be true.

## ALEXANDER F. MAGRUDER.

Subscribed and sworn to before me this 6th day of March, A. D. 1899

J. R. YOUNG, CTk. By R. J. MEIGS, JR., Ass't Clk.

"COMPLAINANTS' EXHIBIT No. 1".

Will of William A. Richardson.

Know all men by these presents: That I, William A. Richardson, Chief Justice of the Court of Claims at Washington, a citizen and 2 - 2265A

inhabitant of Cambridge, in the County of Middlesex and Commonwealth of Massachusetts, and having property in said County, do

make and publish this my last Will and Testament:

1. The portrait of my friend and classmate, Rev. Dr. Thomas Hill, painted by himself at the age of sixty-six, at my request, and the result of the first effort of the kind ever made by him, as stated in the Latin inscription on the face of the canvas, I give and bequeath to Harvard College, of which he was for sometime the President

2. The portrait of myself, painted by Robert Hinckley, I give and bequeath to the Court of Claims, to be delivered, as also that of Dr. Hill, at such time as the family or my executors think best; unless the family or my executors decide upon some other arrange-

ment as to the disposition of my portrait.

3. I set apart whatever sum may be necessary, to be expended by my executors in printing, binding, and distributing to friends and libraries, at home and abroad, my biography to be written by my good friend, Frank W. Hackett, Esq. (graduate of Harvard, 1831) as a labor of love, if he be willing to so undertake it, or failing his acceptance, any other person or persons who may be

inclined to do it in like manner, to be designated by my 19 brother, George, or by my executors. All expenses the writer may incur in the work to be repaid to him out of my

estate.

4. To each of my grandchildren, now or hereafter born. I give and bequeath such jewelry, silver ware, books, personal and household ornaments and articles of furniture as they may select, with the approval of my executors in consultation with the family, to be delivered to them respectively whenever it may be thought best. and presents of any such things and other personal chattels of any kind may be made by my executors in their own discretion at the suggestion of any member of the family.

5. All the rest, residue and remainder of my estate, real and personal, after payment of my debts (secured and unsecured). funeral expenses and the expenses of administration, I give, device and bequeath to my executors or to whomsoever administers my

estate, upon the following trusts:

To collect the income, and the principal when they decide best to do so, pay taxes, insurance, repairs and other expenses; keeping careful accounts of sales, transfers, receipts, investments (in real or personal estate), and of all income, disbursements, and expenditures. so that the exact condition of the estate and the disbursements of all money received may at all times appear by the accounts, which shall be open to the inspection and examination of the parties interested, and copies of which shall be furnished at any and all times when requested by them or either of them.

To expend so much of the income (and of the principal if necessary in ease of an emergency, to be restored from 20 future income when practicable and without too much curtailment of the income) of the estate as may be required for the comfortable and economical support of my daughter, Isabel Richardson Magruder, wife of Dr. Alexander F. Magruder, Surgeon in the Navy, and for the support and the complete and liberal education of her children, whether they live with her or elsewhere. whether they are at school, college, or otherwise apart from their mother during her natural life as well as after her decease.

If my daughter lives until a child (one or more) marries, has a family, or ceases from any cause to live with her, then the income of my estate shall be appropriated among her and her children by my executors, in such proportions as they deem best, the same to be expended by my executors, and if they have any doubts as to the appropriations, then the same to be determined by the Probate Court, siways seeing to it that the education and support of her children shall not be neglected nor suffer by the distribution. education is first of all to be securely and amply provided for. do not mean that it shall be necessary to expend the whole income, but only so much as my executors deem best. My executors, if they deem best for the interest and well being of my daughter and her children, may permit her and them to use the present residence in Washington, with the household goods and other family and personal articles, or may provide a residence for them elsewhere in or out of Washington, whenever they think it best, at any 21

time, to sell or lease the homestead, or for any other reason

satisfactory to them.

As my grand children grow up and become settled in life by marriage, engaging in business or otherwise (before, at or after those periods) my executors, in their discretion, at such time or times, and under such circumstances as they may deem best, may advance to said grand children, any parts of the principal of my estate, to be deducted from their respective shares at the final distribution. If any advance be made to one child, the same amount shall be set aside for the other or each of the others, who shall have the benefit of the income thereof until the final distribution, and then shall have the principal and the accumulated and unexpended interest thereon.

I think it would be well, from near the beginning, to let each child know how much may be allowed for his or her maintenance and education and let them understand that whatever is saved from the same will be held, severally, for their benefit, and whatever is so saved with the accrued income thereof I direct to be paid over

on their arrival respectively at the age of twenty-one years,

6. At the decease of my daughter the whole trust estate, including what remains of the original investments, real or personal, made by my executors, and all personal chattels not used up by my daughter in the maintenance of herself and her family, I give, bequeath and devise in equal shares to the children then living of my daughter,

and the issue of any deceased child by right of representation. .).) free and discharged from all further trusts, provided that one-balf thereof shall be turned over to such child at the age of twenty-one years, and the other half at the age of twenty-six years, or as soon thereafter as, in either case, it may be called for, and that if either child dies while the property or any part of it is

held in trust by not having been called for or otherwise, the share of such child shall go to the survivor or survivors in equal shares and the issue of any deceased child by right of representation on the same terms, and in case there is no survivor, then the whole shall

go as provided in the next succeeding clause,

If my daughter outlives all her issue and dies without lineal descendants then I give, devise and bequeath all the estate remaining unused for her support to the lineal descendants of my father, Daniel Richardson, to be divided and distributed among them according to the laws of Massachusetts for the descent and distribution of the estate of deceased persons.

If my daughter ever has another husband, then from that time she shall have no further support and maintenance from my estate and no further interest therein or benefit therefrom, and the estate then remaining shall immediately be distributed, vested or disposed of as provided in this will upon her decease. I do this in the hope

that her children may never have a stepfather.

7. If it becomes necessary to appoint a guardian for my grand-children, I recommend some Massachusetts man be selected for the trust.

I desire that my executors will look after the welfare of the family and advise and assist the same, as Doctor Magruder is necessarily often absent from home on his official duties and is obliged to leave them without a man to advise and guide them.

8. While I have provided that so much of the income and principal (if necessary) as may be required for the economical and comfortable support of my daughter and her family may be used for that purpose, it is my object and desire that the principal will not be diminished, but rather increased in the hands of my executors, so that my grandchildren will receive as much as my estate is when it comes to the hands of the executors, or more than that, as I think,

with good management the estate might be increased.

9. I authorize and empower my executors to sell at private sale and convey any part or portion of real or personal estate or any rights therein, which I may own at my decease, wherever situated, and invest the proceeds in real or personal estate, according to their discretion, and for the purposes herein expressed, whenever they think those purposes will be best served by so doing and they may sell and convey the whole if they deem best; all conveyances to be free and discharged from all trusts and from all liabilities of the purchasers to see to the application of the purchase money. They may also carry out and execute any agreements to convey real estate and any declarations of trust made by me which may be outstanding at the time of my decease.

24 10. My general purpose is to provide for the support of my daughter during her life and also for the support and education of her children until the estate finally goes to them, whether they live with her or elsewhere; and whatever questions may arise upon the construction of any provisions of my will must be considered in the light of this clause.

11. At the end of twenty-one years after the death of my daughter

all the trusts accrued by my will, if not previously fully executed, shall then terminate and the balance of the estate then on hand shall be paid over, delivered or conveyed to her children as in said will provided, discharged of all trusts, without reference to their ages. I add this provision out of super-abundance of caution, lest, under some contingencies, the law against creating perpetuities may be injudiciously raised and the estate unnecessarily subjected to expensive litigation.

12. I hereby nominate my brother, George F. Richardson, Esq., of Lowell, Massachusetts, and Samuel A. Drury, Esq., of Washington, D. C., executors of my will, and request and direct that no bonds or no sureties be required on their bonds; each to be responsible for his own acts and not for those of the other; but this shall not preclude the Court from requiring bonds with sureties for either of them at any time on request of any parties in interest.

I also nominate my grandson, Alexander Richardson Magruder, to be appointed by the Probate Court an additional co-executor with my brother and Mr. Drury when he attains the age of twenty-one

years without sureties on his official bond. I make this latter nomination because Alexander has a special interest in some trust estates in my hands which he can look to when he becomes older and because I am anxious that Alexander should early learn a knowledge of business and acquire good business ideas and habits, and I join him as one of the co-executors because I think it will afford him an opportunity of doing so. He is a good and thrifty boy and I want him to be a good and thrifty man, looking out for his own interests and the interests of his lovely sister, for whom he must always consider himself a protector and guide, and I especially want him to avoid all bad habits of every kind and to lead an exemplary life, with kindness and dutiful attention to his mother.

13. Whenever there becomes a vacancy in the office of executor by the non-acceptance, resignation, death or otherwise of either my brother George or Mr. Drury, I request that in the place of my brother there be appointed a Massachusetts man, and I prefer a relative if any these be well qualified, and in the place of Mr. Drury one of the best business men of Washington, like him, or in the discretion of the Probate Court, one of the loan and trust companies of Washington, with or without sureties on the official bond, as the Court may decide, upon the recommendation of the remaining executor or any parties in interest. But a vacancy in the co-executor

ship of Alexander need not be filled.

I desire that my executors shall be paid each for the actual services rendered by himself only and that they shall not be responsible for each other's acts.

26 11 Whatever powers, authority or discretion I have given to my executors I give to whosoever settle my estate, and I see no reason why my executors may not perform all the duties of the trust under their appointment as executors, without being specially bonded as trustees. In witness whereof I, said William A. Richardson, hereunto set my hand and seal this 9th day of August, in the year 1895.

(Signed)

WILLIAM A. RICHARDSON.

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Answer of Samuel A. Drury.

Filed March 11, 1899.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as he is advised it is necessary or material for him to make answer unto, answering, says:

1-5. He admits to be true the averments of paragraphs One (1).

Two (2), Three (3), Four (4), and Five (5) of said bill.

6. Answering paragraph six (6) this defendant admits that he has heard and believes to be true the averment thereof that the late William A. Richardson filled the offices of Assistant Secretary and Secretary of the Treasury, but he does not know the time or duration of such services. Nor does he know when the said deceased came to the District to live, or the length of time during which he occupied a seat in the United States Court of Claims, either as Associate Justice or as Chief Justice of said Court, though he admits to be true the averment of said paragraph that the said deceased was Chief Justice of the said Court when he died. This defendant further says that since about the year 1886, when he first knew the said deceased, he

was living with his family in the city of Washington, in said

28 District, and lived there until his death.

Further answering said paragraph, this defendant admits to be true so much thereof as avers the purchase of the family burial lot in Oak Hill Cemetery, and the purchase of a lot of ground on the corner of 18th and H Streets in said city and the erection thereon of a dwelling house during the years 1885 and 1886, or thereabouts, in which he lived till his death; also the fact that his daughter continued to live there after her father's death; and that her children plaintiffs herein, are now living in said house with the consent and permission of this defendant and one George F. Richardson, named in said will as the executors thereof and trustees thereunder.

And further answering said paragraph, this defendant admits to be true so much thereof as avers that said Wiliam A. Richardson, at the time of his death, had closed out all of his investments in Massachusetts, except one or two pieces of real estate of little value, and invested the larger part of the proceeds in securities in the District of Columbia, principally in notes secured by second deeds of

trust on real estate.

7. This defendant admits to be true the averments of paragraph

seven (7) of the amended bill.

8. Answering paragraph eight (8), this defendant says that for

many years prior to the death of said William A. Richardson, he, this defendant, and one John T. Arms, with whom this defendant is a ociated in business, had charge of the investments of money

gy for said deceased, and, as above shown, a large part thereof was invested in what are known as "second trust notes." During the year 1893, the business depression, then everywhere prevailing throughout the country, produced a material decrease in real estate values in said District, which has since continued. In consequence of this depression and decrease, many parcels of real estate, given as security for the payment of said notes, or some of them, have been sold since the death of said deceased, at public auction under the several deeds of trust, and bought in for account of the estate to save it, if possible, from loss. Some lifteen or twenty different parcels have been so sold and bought, with the result that many thousands of dollars of personal property have been thereby converted into real estate, and as such taxable only in said District.

9. Answering the averments of paragraph nine (9), this defendant says that the deceased, before his death, deposited his last will with him, this defendant. The said George F. Richardson, a resident of Massachusetts and a brother of the deceased, came on to attend the funeral. After the funeral, the will was handed to said George F. Richardson, who then stated that it was his deceased brother's wish that his will should be probated in Massachusetts and his estate there administered. This defendant interposed no objection to said procedure and consented to such probate and administration, not being then advised that there was any question of jurisdiction of the Massachusett had been deviced that there was any question of jurisdiction of the Massachusett had been deviced to such probate and administration.

diction of the Massachusetts Court to admit said will to probate, and relying in that behalf upon his co-executor, the said George F. Richardson, himself a lawyer of great learning

and distinction in that State.

10. This defendant is advised that it is not necessary for him to

answer the averments of paragraph ten (10) of the bill.

11. Answering the averments of paragraph eleven (11), this defendant admits that the said George F. Richardson has not undertaken to manage or control the estate of said deceased, or in any way to interfere with the management thereof by this defendant. And this defendant admits that he has had the entire care, custody and management of said estate since the will was probated, has received and disbursed and is responsible for the moneys paid out and expended, and now has in his possession all the personal assets of said estate, except only the household furniture thereto belonging, all of which, as this defendant believes, still remains and is in the said dwelling house, being necessary for the comfort of the plaintiffs.

12. Answering the averments of paragraph twelve (12), this defendant says that he is advised by counsel and believes that under and by virtue of the trusts reposed in the executors and trustees in said will name I and nominated they will have full control of all the property of said deceased, both real and personal, until such time as the plaintiffs attain the ages of twenty-three (23) and twenty-six (26), respectively, and that said executors and trustees will

during that period receive and disburse large sums of money for the purposes in said will specified. And answering for himself, this defendant is willing and hereby consents to now account in this Honorable Court, or in any other Court having jurisdiction in that behalf, for all moneys and other property received by him as such executor and trustee, and to hereafter further account from time to time and as often as may be necessary or proper.

13. This defendant knows nothing of his own knowledge of the averments of paragraph thirteen (13) of the amended bill, but has no reason to doubt the truth thereof. And if it be true, as in said paragraph alleged, that the said George F. Richardson declines to act as trustee under said last will and testament, this defendant is willing and hereby consents that some fit and proper person may be appointed by this Honorable Court to act as such trustee, along with this defendant, in the place and stead of said George F. Richardson.

And having fully answered said bill or so much thereof as he is advised it is necessary for him to make answer unto, this defendant prays to be hence dismissed with his reasonable costs in this behalf

most wrongfully incurred.

And defendant will ever pray, etc.

SAMUEL A. DRURY.

J. ENOS RAY, Jr., Solicitor for Defendant Samuel A. Drury.

32 DISTRICT OF COLUMBIA, set:

Before me, the undersigned, personally appeared Samuel A. Drury, who, being first duly sworn according to law, deposes and says:

I have read over the foregoing answer, by me subscribed, and know the contents thereof. The matters and things therein stated as of my own knowledge are true, and the matters and things stated on information and belief I believe to be true.

SAMUEL A. DRURY.

Subscribed and sworn to before me this 11th day of March, A. D 1899.

SEAL.

EMMA M. GILLETT, Notary Public.

Decree Continuing Restraining Order, &c.

Filed April 1, 1899.

This cause coming on for final hearing on the amended bill, the answer of defendant Drury thereto, and the proofs taken in support thereof, and being submitted without argument and duly considered, it is, thereupon, this 1st day of April, A. D. 1899, ordered that the restraining order heretofore passed in this cause be, and it is hereby, continued till the further order of the Court.

33 is hereby, continued till the further order of the Court:
And it appearing to the Court that the late William A
Richardson was last domiciled in the District of Columbia, and that
the sole beneficiaries under his last will and testament bearing date

the 9th day of August, A. D., 1895, his grandchildren, the infant complainants berein, have always lived, and are now living, in said District, it is, the day and year aforesaid, adjudged, ordered and decreed that Samuel A. Drury and Samuel Maddox, both of said District, be, and they are hereby, appointed trustees to perform the trusts created in and by said will, and authorized and empowered to receive from the executors named in said will all the property whereof the said deceased died seized and possessed, provided, nevertheless, that the said Samuel A. Drury and Samuel Maddox shall first give separate bonds in the penal sum of Twenty-five thousand dollars, each, with one or more sureties to be approved by this Court, conditioned for the faithful discharge of their duties as such truseets.

By the Court:

CHAS. C. COLE, Asso. Justice.

Order Referring Cause to Auditor.

Filed October 18, 1899.

On motion of the plaintiffs, it is, this 18th, day of October, A. D. 1899, ordered that this cause be and it is hereby referred to the auditor to ascertain and report the amount and character of the estate, real and personal, whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of said deceased.

By the Court:

JOB BARNARD. Justice.

Auditor's First Report.

Filed December 19, 1900.

This cause was, by an order passed on the 18th, of October, 1899, referred to me to ascertain and report the amount and character of the estate, real and personal, whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of the said deceased. Upon the cause being moved in this office and after due notice, I proceeded under this order of reference and return the said accounts stated in the schedules herewith, together with the vouchers and exhibits submitted and filed.

The bill in this case is filed on behalf of the two grandchildren of the late William A. Richardson, appearing by their next friend, and sets forth that the said William A. Richardson died in this District in October 1896, leaving a last will and testament, and appointing the defendants, George F. Richardson

and Samuel A. Drury, executors of the said will; that the defendant, Richardson, caused the said will to be filed for record and probate in the Probate Court of the County of Middlesex in the State of Massachusetts. The bill averred that at the time of his death, the testator was, and had been for many years, a resident of this District, and prayed that the further administration of his estate might be under the order and direction of this Court.

Thereupon this Court made a decree on the 1st. of April, 1899 appointing Samuel A. Drury and Samuel Maddox trustees to perform the trusts created by the said will, and to receive from the executors named in the will all property whereof the said deceased

died seized and possessed.

The trustees named in this decree having qualified according to its terms, received from the executors the personal estate of the testate and took charge of his real estate, and under the order of October 18th, 1899, they presented their accounts here for examina-

tion and report.

The will of the testator, a copy of which is filed in this cause as Complainants' Exhibit No. 1. after certain specific legacies and the payment of debts, funeral expenses, &c., gives devises and bequeathes the residue of the estate real and personal, to his executors or whose ever should administer his estate, upon the trusts hereinafter described

Schedule A contains the account of the principal personal estate. The assets received by the trustees from the executors consisted of

household effects, carriages, harnesses and stable equipments which are charged to the trustees at their original appraise ment, stocks which are charged on the same basis and one lot of stock of unknown value, a large number of promissory notes aggregating \$248,569.01 and reported as good, other promissory notes aggregating \$26,907.96 and reported as desperate, and a sum The promissory notes first named are enumerated in detail in Schedule B, and their aggregate amount of principal is charged to the trustees in Schedule A. The notes reported as desperate are enumerated in a statement of the trustees marked Exhibit B 1.

The trustees have paid to the executors the commissions allowed by the Court in the settlement of their accounts, they (the executors) not having in hand funds sufficient for that purpose. The trustees have also paid off indebtedness secured by deeds of trust as set forth in this Schedule and in Schedule F. In addition to their credits I have allowed counsel for services rendered the estate in an ejectment suit and in the present proceedings, these allowances being in my judgment reasonable compensation for the services which are set forth in a statement of counsel filed herewith. period covered by this accounting the trustees have collected certain of the promissory notes above-mentioned, which are enumerated in Schedule C and aggregate the sum of \$127,467.81. invested the funds in the purchase of other promissory notes to the extent of \$74,307.40 and have in hand as of April 30th. 1900, notes

as enumerated in Schedule E, aggregating in amount of principal \$195,408.60.

37 The five shares of stock of the Lowell Manufacturing Company constituting part of the original estate has been converted into thirty-five shares of stock of the Bigelow Carpet Company which for the purposes of this report are considered of the same value as the original appraisement of the former stock.

Schedule A then shows the principal personal estate in the hands

of the trustees as of April 30th, 1900.

Pursuant to the direction of the order of reference I have also stated in this Schedule the real estate constituting a part of this trust and in the control and management of the trustees. In addition to the real property the title of which is vested in the estate, the trustees, by virtue of arrangement with the owners for the gradual payment of indebtedness to the estate, collect and receive the rental of four other parcels of property which for information are noted at the foot of this Schedule.

In Schedule G I have stated the account of income, charging the trustees with their receipts of interest, dividends and rents, the income from a special account with H. D. Cooke and an item of protest fees collected. The trustees hold certain policies of insurance on the life of H. D. Cooke as security for debt and keep a special account of moneys received on his account and disbursements made

in maintaining the securities.

I have allowed credit for these disbursements, also for the payment of interest on trust indebtedness, taxes, insurance, repairs, and other necessary expenses. I have allowed the trustees the

full commission on their collections of income. These collections and their disbursement form but a part of the service imposed upon these trustees and a much smaller part of their responsibility. I have taken into consideration the magnitude of the principal personal estate and its shifting character as illustrated by the conversion of more than one-half of the promissory notes into money during the period of this account and the reinvestment of the funds in other safe, interest bearing securities as well as the discharge of nearly thirty thousand dollars of liens upon the real The compensation allowed in this report is less than the value of the service but no more is claimed by the trustees. will of the testator directs the income of the estate to be applied to the support and education of his grandchildren and the trustees have made payments to the guardian for that purpose. These disbursements are credited to the trustees in this account.

There appears to be due to this income account from the Eliza C Magruder trust a sum for moneys advanced to or for that trust

which can be adjusted in the future.

## Eliza C. Magruder Trust.

On the 9th day of February, 1894, Eliza C. Magruder and other parties conveyed to William A. Richardson certain real estate in Washington and Georgetown in the District of Columbia and in

the City of St. Louis, Missouri, and transferred to him forty-seven shares of the capital stock of the Georgetown Gas Light Company,

On the same date the said Richardson executed a declaration 2353 of trust acknowledging that he held all of the said property in trust to collect the income, pay taxes, insurance and repairs, to sell the property, real and personal, with the consent of the said Eliza and reinvest the proceeds to be held on the terms of the trust, and to pay over to the said Eliza C. Magruder the net in-

come in quarterly, annual or monthly payments.

This property was held by the testator William A. Richardson at the time of his death subject however to an assignment by him to the said Eliza C. Magruder of the dividends and income of the Gas Company stock with an irrevocable power of attorney to her to draw such dividends in her own name during her life. This assignment and power of attorney was executed at the date of the declaration of trust.

That instrument further declares that upon the death of the said Eliza, the declarant was to convey and transfer all of the said e-tate. real and personal, to the children of Alexander F. Magruder.

It further provided that upon the death of the declarant all the trusts, powers and obligations vested in him by the said conveyances and the said declaration should vest in and be executed by his executors or whoever should settle his estate, in the same manner as they vested in him.

A copy of this declaration is filed as a part of this report.

The accounting trustees took charge of this trust which for convenience is described in this report as the "Eliza C. Magruder Trust" and collected the rents of the real estate.

Neither the testator in his lifetime nor these trustees received any dividends or income of the Gas Company stock

and are not accountable for such income

In Schedule II I have stated the account of these trustees of their dealings with this special trust, setting forth the changes of investment, the receipts of income in rents and interest, the expenditures for taxes, water rents and repairs, payment of interest which accrued on notes purchased as investments and payments to the beneficiary of the trust. These disbursements exceed the receipts showing that she has received more than the net income to which she was entitled. This excess was taken from the income of the main trust and should be refunded when the income of this trust allows. In view of this condition I have not stated any allowance of compensation to the trustees, leaving that for a future accounting and for the same reason I have not charged this trust with any part of the costs of

I have also enumerated in this Schedule the real and personal

property comprised in this trust.

JAS. G. PAYNE, Auditor,

December 17th, 1900.

Whereas Eliza C. Magruder, Alexander F: Magruder, with Isabel Richardson Magruder (his wife), and John R. Magruder, with Kate M. C. Magruder (his wife), all of Washington, D. C. in the District of Columbia have conveyed to William A. Richardson of Cambridge in the County of Middlesex and Commonwealth of Massachusetts, Chief Justice of the Court of Claims at said Washington, by three deeds of even date herewith:

1. The old homestead estate of the late Dr. Hezekiah Magruder in

Georgetown in said District.

2. A small estate in said Washington which they inherited from

Mrs. Alice Downman as her heirs at law.

3. An estate in St. Louis, Missouri, which they inherited in like manner from Mrs. Downman.

And said Eliza C. Magruder has this day transferred to said

Richardson 47 shares in the Georgetown Gas Light Company.

Now I said William A. Richardson hereby acknowledge that said property, real and personal, is conveyed to me in trust upon the fol-

lowing trusts:

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1. I am to take care of the same, collect the rent, and income, pay taxes, insurance and repairs, collect the insurance money in case of damage by fire, and rebuild if I deem advisable, sell and convey the real estate in whole or in part for cash, or notes, at such times and in such manner as to me may seem best, sell said Gas Company stock, with the consent of said Eliza, and reinvest the pro-

stock, with the consent of said Eliza, and reinvest the proceeds, to be held on the terms of this trust; and generally to

d2 ceeds, to be held on the terms of this trust; and generally to change the investments from time to time of all property held under this trust as I may deem best, except that the sale of said Gas Company stock and the reinvestments of the proceeds thereof during her life shall not be made without the consent of said Eliza.

2. I am to pay over to said Eliza during her life time the net income of the whole trust estate, after deducting taxes, insurance, repairs, cost of collections and all other expenses and expenditures connected with the same, in quarter, annual, or monthly payments. I have already assigned to her the dividends and income of said Gas Company stock, and have given her an irrevocable power of attorney to draw in her own name all dividends thereon during her life time.

In case of emergencies and in my discretion or the discretion of any person or persons by whom these trusts may be executed such parts of the principal of the estate as may seem necessary may be

paid over to said Eliza or used for her benefit.

3. At the decease of said Eliza, I am to convey, transfer or pay over all of the estate, real or personal, then belonging to this trust, and the investments and reinvestments thereof to the children of said Alexander F. Magruder then living and the issue of any deceased child by right of representation.

4. Upon my decease, all the trusts, powers, duties, obligations and discretions vested in me by said deeds and this declaration are to vest in and be executed by my executor or executors or whosoever settles my e tate in the same manner as they vest in me.

In witness whereof I hereunto set my hand and seal this ninth day of February in the year eighteen hundred and ninety-four. Signed. WILLIAM A. RICHARDSON.

We the parties in interest above named, hereby certify that the foregoing declaration of trust is correct and in accordance with our agreement.

Signed.

ELIZA C. MAGRUDER. A. F. MAGRUDER. JOHN R. MAGRUDER. KATE M. C. MAGRUDER.

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#### SCHEDULE A.

Account of Samuel A. Drury and Samuel Maddox, Trustees.

Dr.	
To Principal personal estate received from the Exelows:	ecutors as fol-
Household furniture and effects appraised at	. 750.00
pany 350 shares of capital stock of the Universal Car Couple Company, value unknown. 5 shares of capital stock of the Lowell Manufacturin	5,270.00 er
Company Promissory notes as per Schedule B (good) Promissory notes as per Schedule B (desperate \$26,907.96.	. 2,625.00
Cash	9,285.03
Cr.	270,209.04
By paid commission to executors allowed by Probate Court, Massachusetts	
Paid indebtedness secured by deeds of trust, per Schedule F	

suit of ejectment vs. Laura V. 45 Stone et vir, 100.00, and for services as counsel in this proceeding 350.00 Auditor's fees and costs for principal . . . . . 300.00 Carried forward..... 48,266.57

#### SCHEDULE A.

#### Account of Trustees Continued.

Dr.

To amount brought forward	\$270.209.04
Cr.	
By amount brought forward	48,266.57
Balance of principal April 30, 1900, as follows:	\$221,942.47

Household furniture and effects as originally	· ·
appraised	3.710.00
Carriages, harness, &c., ditto	750.00
34 shares of capital stock of the Northern	1
Railroad Company, ditto	5.270.00
35 shares of stock of Bigelow Carpet Com-	
Company, ditto	2.625.00
Promissory notes per Schedule E	195,408.60
Cash	14,178.87
	\$991 949 47

Promissory notes, desperate, per Schedule Bb, \$26,907.96. 350 shares of capital stock of the Universal Car Coupler Company, value unknown.

JAS. G. PAYNE, Auditor.

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#### SCHEDULE A-Continued.

Statement of Real Estate Included in the Trust.

Lot numbered 26 in Square 71, No. 1112 New Hampshire Avenue.

Lot numbered 139 in Square 235, No. 1306 M Street, n. w. Lots 12, 13 & 14 in Square 127, No. 1739 H street, n. w. Lot lettered D in Square 211, No. 1424 Rhode Island Avenue. Lots 41 and 42 in Square 107, No. 1824 and 1826 L street, n. w. Lot numbered 140 in Square 235, No. 1308 W street, n. w. Lot numbered 22 in Square 304, No. 2009 12th street, n. w. Lot numbered 23 in Square 304, No. 2011 12th street n. w. Lot numbered 146 in Square 235, No. 2132 13th street, n. w. Lot numbered 48 in Square 240, No. 1332 R street, n. w. Lots 6, 7 and 21 in Square 550, Nos. 207 & 209 R street, n. w. Lot 15, in Square 307, Vermont Avenue & R streets, n. w. Lots 1, 6, 7, 8, 9, 17-24, Block 6, "Edgewood", Unimproved, Lot 28 in Block 13, Le Droit Park, No. 322 Spruce street. Lot 187, Mount Pleasant, No. 3042 14th street, n. w.

Lot 20 in Square 72, No. 2112 M street, n. w. Lot 33 in Square 388, No. 917 Desmond Alley, s. w. Lot 119 in Square 981, No. 814 Twelfth street, n. e. Lot 37 in Square 812, No. 443 Fourth street, n. e. Lot 71 in Square 887, No. 727 L street, n. e. Lot 14 in Square 966, No. 1007 Massachusetts Avenue, n. e. Lot 51 in Square 754, No. 520 Third street, n. e. Lot 197 in Square 855, No. 654 L street, n. e. Lot 25 in Square 676, No. 20 H street, n. e.

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#### SCHEDULE A-Continued.

Property from which this Estate receives the Rental. Lot 33 in Square 943, No. 917 North Carolina Avenue, s. e. Lot 104 in Square 623, No. 47 Defrees street. Lot 51 in Square 937, No. 421 Ninth street, n. e. Lot 50 in Square 937, No. 419 Ninth street, n. e.

JAS. G. PAYNE, Auditor.

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#### SCHEDULE Aa.

## Note and Cash Accounts.

#### Note Account.

Received from Executors Schedule B  Notes purchased Schedule D		$\substack{248,569.01 \\ 74,307.40}$
Notes paid Schedule C		322,876.41 127,467.81
Notes on hand May 1, 1900, Schedule E		\$195,408.60
Cash Account.		
Received from Executors		$9,\!285.03 \\127,\!467.81$
Paid Executors	74,307 . 40 18,800 . 00 7,500 . 00 21,316 . 57 350 . 00 300 . 00	
	_	122,573.97
Balance in hand		<b>\$14,178.87</b>

JAS. G. PAYNE, Auditor.

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#### SCHEDULE H.

## Account of the Eliza C. Magruder Trust.

#### Trustees' Account.

#### Dr.

To collection of note of Chas. H. Ruth Ditto of note of same		\$3,000.00 2,300.00
Invested in — Note of Ellen Curtin	. 2,000.00	5,300.00
Note of Daniel Twomey	. 3,300.00	
	\$5,300.00	
Income.		
Dr.		
To Rents collected		$970.67 \\ 333.90$
		1,304.57
Cr.		
By Taxes paid	245.13	
water rent paid	13 08	
Paid accrued interest on note purchased	86.33	
Paid for repairs Paid Eliza C. Magruder	42.78	
Borrowed from income of main trust	972.94	55.69
	\$1,360.26	\$1,360.26

Due Income of main trust, Schedule G, \$55.69.

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#### SCHEDULE H.

Account of Eliza C. Magruder Trust Continued.

Principal Estate, April 30, 1900.

#### Real Estate.

Property in St. Louis, Missouri,

Premises No. 1121 Fifteenth street, northwest, in Washington, D. C.

Premises No. 441, Franklin street, Washington, D. C. 4-2265A

#### Personal Estate.

Promissory note of Ellen Curtin	2,000.00 $5,300.00$

5,300.00

47 shares of the capital stock of the Georgetown Gas Light Company subject to the power of attorney of Eliza C. Magruder to collect the dividends.

JAS. G. PAYNE, Auditor.

Some time in the early part of 1899, and before I was 51 substituted as trustee under the will of Judge Richardson in the place and stead of his brother, I was consulted by Mr. Drury, the local executor, with regard to the collection of forty-eight notes for \$25. each, made by Laura V. Stone and William R. Stone, her husband, secured by second deed of trust on lot 15, in square 307, in this city. Before I was so consulted, the property had been offered for sale in accordance with the provisions of the deed of trust, and nominally purchased by Edward F. Caverly, a clerk in the office of Messrs. Arms & Drury. A deed was drawn conveying the property to Caverly. The Stones, husband and wife, declined to deliver possession of the property, and on the 24th of February, 1899, an action in ejectment was begun against them by Caverly as plaintiff. Pleas were entered to the action and issues joined on the 22nd of March. Owing to the delays necessarily incident to the trials of actions at law, it was deemed advisable to make an effort to secure the appointment of a receiver pending the trial. For this purpose, a bill in equity was prepared in the name of Mr. Drury and myself, I in the meantime having been substituted as trustee under the will of Judge Richardson, covering eight or nine pages. But owing to several causes, it was thought inadvisable to file the bill, because of rulings of the court in other similar cases.

Wherefore, we deemed it best to wait for a trial of the ejectment suit, which we hoped to secure in November or December. This,

however, did not occur until February 27, of the present year, when a trial was had before Mr. Associate Justice Bradley and a jury, resulting in a verdict for the plaintiff for the possession of the property and costs. A motion for a new trial was interposed, argued and overruled, and subsequently a writ of possession issued to the Marshal by whom it was executed later. The property in controversy is estimated to be worth from seven to eight thousand dollars.

For my services in this case, I ought probably to have a fee of \$100.

For conducting the proceedings in the present cause, I ought to have a fee of not less than \$250.

SAML, MADDOX.

### Order of Reference to Auditor.

Filed January 15, 1909.

Upon motion it is this 15 day of January 1909 ordered that this cause be and it is hereby referred to the Auditor to state the account of the trustees herein as of date January 17, 1909.

By the Court:

JOB BARNARD, Justice.

Petition of Alexander R. Magruder and Isabel R. Magruder.

Filed June 16, 1909.

To the Supreme Court of the District of Columbia, Holding an Equity Court:

The petition of Alexander Richardson Magruder and Isabel Rich-

ardson Magruder respectfully represents:

I. William A. Richardson, deceased, late Chief Justice of the Court of Claims at Washington, D. C., by his last will and testament duly probated and of record in the Probate Court at Cambridge, Middlesex County, Massachusetts, and duly admitted to probate in and

by the Supreme Court of the District of Columbia holding 54 a Probate Court on the 8th day of March, 1904, and of record in the Office of the Register of Wills for the District of Columbia, in Will Book No. 37, folio 334, made disposition of his estate, real and personal, and created certain trusts, and in and by

the sixth clause thereof provided, that,-

"At the decease of my daughter the whole trust estate, including what remains of the original investments, real or personal, made by my executors, and all personal chattels not used up by my daughter in the maintenance of herself and her family, I give, bequeath and devise in equal shares to the children then living of my daughter, and the issue of any deceased child by right of representation, free and discharged from all further trusts, provided that one-half thereof shall be turned over to such child at the age of twenty-three years, and the other half at the age of twenty-six years, or as soon thereafter as, in either case, it may be called for, and that if either child dies while the property or any part of it is held in trust by not having been called for or otherwise, the share of such child shall go to the survivor or survivors in equal shares and the issue of any deceased child by right of representation on the same terms, and in case there is no survivor, then the whole shall go as provided in the next succeeding clause,"-

as will more fully and at large appear, reference being had to said last will and testament.

55 II. The daughter of said William A. Richardson, the testator, mentioned in said will, Isabel Richardson Magruder, died on the 4th day of April, 1898, leaving surviving her as her sole heirs at law and next of kin, her only children, the petitioners, Alexander Richardson Magruder, who was born on the 17th day of January, 1883, and Isabel Richardson Magruder, who was born

on the 20th day of April, 1886.

III. By a decree of this Court entered in this cause on the first day of April, 1899, reference to which is hereby made, and for the reasons therein stated, Samuel A. Drury and Samuel Maddox were appointed trustees to perform the duties created and imposed by said will, and were authorized and empowered to receive from the executors named in said will all the property whereof the decedent, William A. Richardson, died seized and possessed, as will more fully and at large appear, reference being had to said last will and testament.

IV. On the petition of the said Samuel A. Drury and George F. Richardson, the executors of said last will and testament, to the Judge of the said Probate Court at Cambridge, in the County of Middlesex, Massachusetts, in and by which said Court said last will and testament was approved and admitted to probate as aforesaid said Probate Court on the 11th day of April, 1899, ordered and decreed that said Samuel Λ. Drury and George F. Richardson, executors as aforesaid, pay over the said trust funds and property of said estate to the said Samuel Λ. Drury and Samuel Maddox.

trustees as aforesaid, as will more fully and at large appear from said order and decree, reference being had thereto.

V. Afterwards, to wit, on the 25th day of April, 1899, said executors filed in said Probate Court their first and final account which was approved by said Court on the day and year last aforesaid.

A copy of the inventory filed by said executors, and a copy of said account showing the property received and receipted for by said trustees, are filed herewith and made a part hereof and marked "Magruder Exhibit A" and "Magruder Exhibit B". Said trustees thereupon took into their possession the property and funds described in their receipt attached to said account.

VI. In and by the twelfth clause of said last will and testament, the testator, for the reasons therein fully set forth, nominated the petitioner, his grandson, Alexander Richardson Magruder, to be appointed by the Probate Court an additional Co-executor with the testator's brother and said Samuel A. Drury, when he should attain the age of twenty-one years, without sureties on his official bond.

When the petitioner. Alexander Richardson Magruder, became of age he made application to this Court to be appointed a co-trustee with the said Samuel A. Drury and Samuel Maddox, and by the order and decree of this Court entered on the 18th day of April, 1906, he was duly appointed "to act in connection with Samuel A. Drury and Samuel Maddox, heretofore appointed in this cause trustees in that behalf in the performance of the trusts created in and by the last will and testament of the late William

in and by the last will and testament of the late William A. Richardson", and gave bond as required by said decree.

Since the receipt by the said trustees of the property transferred and delivered to them under the order of said Probate Court of Middlesex County, Massachusetts, on the 25th day of April, 1899.

as aforesaid, said trustees, Drury and Maddox, have had the possession, management and control of the assets and property of said estate.

The petitioner Alexander Richardson Magruder has had as trustee no active participation in the management thereof nor in the execu-

tion of the aforesaid trusts.

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Said trustees, Samuel A. Drury and Samuel Maddox, have, from time to time, filed in this Court their accounts,-five in number,which have been referred to the Auditor and passed upon by him, and there is now before the Auditor their sixth account which

is now under consideration by the Auditor.

VII. The petitioner Alexander Richardson Magruder attained the age of twenty-three years on the 17th day of January, 1906, and then became entitled, under the terms of his grandfather's said will, to receive from said trustees and to have and to hold in his own right one-fourth part of the assets and property constituting said estate, but he made no request therefor and allowed the same to remain in the custody and management of said trustees.

The petitioner Alexander Richardson Magruder attained the age of twenty-six years on the 17th day of January, 1909, and then became entitled, under the terms of the aforesaid last will and

testament of his said grandfather, to have turned over to him one-half of said estate and of all the property and funds constituting the same, and he thereupon and before said 17th day of January notified said trustees, in writing, that he desired to have his proportion of said estate at once transferred and conveyed to him.

VIII. The petitioner Isabel Richardson Magruder attained the age of twenty-three years on the 20th day of April, 1909, and thereupon became entitled, under the said will of her grandfather, to have turned over to her one-half of one-half of the said estate and of all the property and funds constituting the same, and thereupon and before said 20th day of April, 1909, notified said trustees, in writing, that she desired to have her said proportion or part of said estate at once turned over, transferred and conveyed to her,

IX. The said trustees, Samuel A. Drury and Samuel Maddox, have made and presented to the petitioners a paper writing headed,-"List of assets comprising Estate of William A. Richardson, deceased, in possession of Samuel Maddox and Samuel A. Drury. trustees. January 17th, 1909," which is hereto attached and marked

"Magruder Exhibit C"

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The properties described in the said statement or schedule so made by said trustees, as aforsaid, have been classified and enumerated in the paper or table filed herewith and marked "Magruder Exhibit D", under the following headings:

(1) Notes, supposed to be good and well secured;

(2) Realty, (the title to which is supposed to be good);

(3) Stocks, (supposed to be good)

(4) Property to be held jointly by Alexander R. and Isabel R. Magruder.

Under this last heading are included notes of uncertain value, a

farm in Maryland, the family residence on "H" Street, in the City of Washington, D. C., and certain securities of no present value.

With the friendly aid of Mr. John A. Baker and Mr. Arthur D. Addison valuation has been made of each of the properties described in said paper marked "Exhibit D", which is believed to be substantially and approximately correct, provided the title to the real estate is good and the security sufficient, and all the properties under the headings, (1) Notes, (2) Realty, and (3) Stocks, have been separated and divided into two allotments or lists, designated in said "Exhibit D", respectively, as Allotment A and Allotment B, and one of said allotments contains and describes properties as nearly equal in value as practicable to the value of the properties described in the other of said allotments.

All the other properties described in said "Exhibit D" are therein designated as "To be held jointly" by the said Alexander R. and

Isabel R. Magruder.

The total of the valuation of the properties contained in said allotments and placed under said headings (1) Notes,, (2) Realty, and (3) Stocks, is \$204,701.71.

The total valuation of all other properties, described in said "Exhibit D" under heading (4) "To be held jointly", is

60 \$56,500.00.

The total valuation of all the properties described in said

"Exhibit D" is \$261,201.71.

Under the terms of the last will and testament of the said William A. Richardson, deceased, one-fourth part of the properties described in the aforesaid statement made by said trustees is to be held trust until the petitioner Isabel R. Magruder attains the age of twenty-six years, and one-fourth part thereof should now be turned over to her and one-half thereof should now be turned over to the said Alexander R. Magruder by said trustees.

One-fourth of the fair valuation of all the properties described in said statement of said trustees is \$35,300.42, being one-fourth

of said sum of \$261,201.71.

X. The petitioners, each acting for himself and herself, respectively, have, with the advice of the said John A. Baker and Arthur D. Addison and with the approval of said trustees and subject to the approval of this Court, agreed upon and elected to make the following division and distribution of the properties described in said statement, Exhibit C and Exhibit D, that is to say:

(1) The petitioner, the said Alexander R. Magruder, is to have turned over to him, and properly assigned and conveyed to him, all the notes and pieces of ground and stocks described and enumerated

in said Allotment B

(2) There shall be held in trust under the terms of the said last will and testament of the said William A. Richardson, deceased, by the said trustees or by a trustee or trustees to be appointed

61 by the Court in their stead, all the notes described and enumerated in said Allotment Λ, amounting to \$63,442.62, and also of the pieces and parcels of land therein described those two pieces or parcels described as sub-lot 104, in Square 623, in the

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City of Washington, D. C., and lot 9, in the sub-division of land known as "Edgewood", in the District of Columbia, being item 71 and included in item 72, respectively, in the said statement of said trustees, the valuation of the said pieces or parcels of land being the sum of \$1,800.00, which sum added to the valuation of said notes \$63,442.62, makes the sum of \$65,242.62, which said last mentioned sum is within \$57.80 of \$65,300.42, or the valuation of one-fourth of all the funds and property comprising said estate, and which is to be held subject to and under the trust created by said last will and testament.

(3) The said petitioner Isabel R. Magruder is to have turned over and conveyed to her, or as she may direct, all the other pieces and parcels of land and property described in said Exhibit D under the heading Allotment A.

(4) There shall be turned over and conveyed to the said Alexander R. Magruder and Isabel R. Magruder all the pieces and parcels of land and property of every kind described in said Exhibit D. under the heading "To be held jointly", to be held by them as tenants in common, each having an equal interest therein.

The circumstances as to the valuation of said properties, and the agreement and election of the petitioners as to division thereof, are shown by the papers filed herewith and marked "Magruder 62 Exhibits E, F and G".

A. Drury. Samuel Maddox and Alexander R. Magruder are willing and prepared to turn over and convey the said properties as herein indicated and provided and to resign from and be divested of the trusts, powers and title imposed upon or vested in them under the said last will and testament and the aforesaid order of this Court so far as the same relate to and affect the notes and the said two pieces or parcels of land aforesaid, and that the American Security and Trust Company may be made and substituted in their place and stead as trustee to hold and execute said trusts in respect of said note and pieces of land in accordance with the requirements of said will and testament.

The petitioner Isabel R. Magruder, by an indenture bearing even date with this petition, has conveyed to the American Security and Trust Company, trustee, in trust and upon the trusts therein set forth, all her right, title and interest in and to all the propertier described in said Allotment A.

Wherefore the Petitioners pray:

First. That the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder may be authorized and directed to set over, assign, transfer, convey and deliver to the said Alexander R. Magruder, by proper endorsements and conveyances, all the trust funds and property described in said Exhibit D under the heading Allotment B.

63 Second. That the American Security and Trust Company may by this Court be appointed trustee in the place and stead of the said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder in respect of and for the said notes described in said

Exhibit D under the heading "Allotment A", and in respect of the pieces and parcels of land and premises hereinbefore described, to wit, sub-lot 104, Square 623, Washington, D. C., and lot 9 in Edgewood, in the District of Columbia, to hold the same under and for the purpose of executing the aforesaid trusts imposed by the last will and testament of the said William A. Richardson, deceased, and the aforesaid order of this Court, in respect of the fourth part of said estate.

Third. That the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder may be authorized and directed to turn over, assign, transfer, convey and deliver to the petitioner Isabel R. Magruder, or as she may direct, all the pieces and parcels of land and properties described in said Exhibit D under the heading "Allotment A", except the said notes and the two pieces and parcels

of land, hereinbefore described, to her sole use

Fourth. That the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder may be authorized and directed to turn over to the said petitioners Alexander R. Magruder and Isabel R. Magruder, as tenants in common, all the notes, property and real estate described in the aforesaid paper or schedule marked "Exhibit D", under the heading (4) "To be held jointly".

hibit D", under the heading (4) "To be held jointly".

Fifth. That this cause may be retained in this Court for the purpose of having stated and settled the accounts of said trustees and each of them, and of having ascertained and determined what is justly due said trustees for compensation and commissions, and what, if anything, is due said estate, and what property, if any, still remains in the possession of said trustees, and not disposed of, and in order to make such other and supplemental decrees as may be found necessary to fully execute said last will and testament.

ALEXANDER R. MAGRUDER. ISABEL R. MAGRUDER.

NATH'L WILSON, C. R. WILSON, Solicitors for Petitioners.

DISTRICT OF COLUMBIA, 88:

Alexander Richardson Magruder and Isabel Richardson Magruder, being first duly severally and separately sworn, severally and separately depose and say that they have read the foregoing and annexed petition by them subscribed and know the contents thereof; that the facts therein stated as of their own knowledge are true, and those stated upon information and belief they believe to be true.

ALEXANDER R. MAGRUDER. ISABEL R. MAGRUDER.

Subscribed and sworn to before me this tenth day of June, A. D. 1909.

[SEAL.] E. L. WHITE, Notary Public in and for the District of Columbia.

(Here follows statement marked pp. 65 and 66.)

MAGRUDER EXHIBIT "D" to the petition of Alexander R. and Isabel R.	
IN THE SUFREME COURT OF THE DISTRICT OF CO	
ALEXANDER R. MAGRUDER et al )	TOWBIA
SAMUEL A. DRURY BQUITY NO. 20,037	
Disposition of Assets reported by trustees as constituting the Estate son, deceased, made with reference to a division parts to devisees.	of m
(1). NCTES If all are secured under	lstr
Allotment A.	
1. Aquila, G., 2 notes \$500 each \$1,000	200
3. Brown, Lee, 1 note 2,000	Br
2. Brewer, E. B., 1 note 500	Gz
6. Daingerfield, W. B., 1 note 3,000	Ir
18. King, C. W., Jr. 2 for 1,000 &	G:
2 " 500 3,000	Iz
10. Groff, D.B., 3 notes-2,500 each - 7,500	Hc
13. Int. Paid on 2 notes to Aug. 1	Ht
& on 1 note to Oct. 2, 1908.	E:
20. King, C. W., Jr. 1 note 15,000	
25 Morrisey, E., 9 notes-10. each - 90	Mc
27. Falmer, W. J., 1 note-2,000 &	E:
1 " 500 2,500	Me
30. Payne, J. C. 1 note 1,900	Xe.
31. Richold, L. 1 note 5,000	Pe
33. Robinson, Jane, 6 for 500. each 3,000	Pe
22. Lowery, G. C. 3 notes, 2 for	Ri
1,000-each & 1 for 500 2,500	Ro
41. Wardman, H. 4 notes of 1,000 4,000	70.
pert 38 ( " " 3 " 1 " 2,000 &	8
& all 39. ( 2 " 500 3.000	
42. " " 4 " " 1,000 - 4,000	
43. " " 4 " " 1,000 - 4,000	
Int. accumulations to Apr. 1 - 452.62	
part 73. 2 notes of Merriwether-500 1,000	Int

1,000

' Nm. A. Richardnto two equal

## t mortgage.

## Allotment B.

Draper, W. A., 1 note	- \$2,000	7.
Engler, M. R., 1 note	- 1,000	в.
Groff, D. B., 1 note	- 2.500	•
Int. Paid to Aug. 1, 1908.	2,000	14.
Groff, D. B., 1 note	- 2.000	12.
Int. Paid to Oct. 2, 1908.		***
Holman, B. W., 1 note	2,500	16.
Hubbard, V.M., 1 note	1,750	17.
King, C. W., Jr., 4 notes, 2 for		
1,000 & 2 for 500	3,000	19.
Morrisey, E., 9 notes-10. each-	90	÷ 25.
King, C. W., Jr. 1 note	15,000	21.
Mazzie, F. A. & E. 1 note	4,000	24.
Newton, C. P. 1 note	750	26.
Palmer. W. J. 2 notes-2,000	4,000	28
Palmer, W. J. 2 notes- 500	1,000	29.
tichold, L. 1 note	4,000	32.
lobinson, J. 6 for 500	3,000	± 33.
erdman, H. 3 notes of 1,000	3,000	35.
" " 2 " " 2,000 &	)	
1 " " 500 -	4,500)	& 40.
" " 4 " " 1,000 -	4,000 36	& 37.
" " 4 " " 1,000 -	4,000	44.
nt. accumulations to Apr. 1 -	406.61	

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## (2). REALTY - - - (if title clear)

## Allotment A.

		Allotment A.
	55.	Sub. lot 20, Sq. 72, (No. 2112 M St., N. W.)\$4,500.00
	59.	Sub. lot 48, Sq. 240, (No. 1332 R St., N. W.) 6,000.00
	61.	Sub. lot 141, Sq. 235, (No. 1308 W St., N. W.) 3,500.00
	63.	Sub. lot 22, Sq. 304, (No. 2009-12th St., N. W.) - 3,500.00
	66.	Sub. lot 14, Sq. 966, (No. 1007 Mass.Ave., N.E.) - 3,500.00
	69.	Lot 187, Spalding's Subdivision of Pleasant Plains, (3042-14th St., N. W.) 6,000.00
	70.	Sub. lot 28, Block 13, Le Droit Park, (322 J St., N. W.) 2,750.00
	71.	Sub. let 104, Sq. 623, (47 Defrees St., E.W.) 1,500.00
		Lot 16, Edgewood 673.45
	72.	Lots 6 & 7. Edgewood 600.00
6.	72.	Lot 9, Edgewood 300.00
		(Lots 18-19-20, Edgewood 1,357.02
		(3). STOCKS.
1	47.	17 Shares Northern R. R. Co.

JNO. A. BAKER

pt. 48. 18 Shares Bigelow Carpet Co.- - 2,250.00 \$38,929.47

pt.

at \$147- - - - - - - - 2,499.00

# Allotment B.

lot 26, Sq. 71, (No. 1112 N. H. Ave., N. W.) \$4,500.00	)	54.
inel lot 15, Sq. 28, (S. W. cor K & 25th Ste. N. W. )- 2,926.70		56.
lot D. Sq. 211, (1424 R. I. Ave., N. W.) 7,000.00		58.
lot 140, Sq. 235, (1306 W St., N. W.) 3,500.00		60.
lot 146, Sq. 235, (2132-13th St., N. W.) 4,000.00		
lot 23, Sq. 304, (2011-12th St., N. W.) 3,500.00		62.
sub. lot 33, Sq. 388, (13 x 61.50 ft.)		64.
(917 Desmond Alley, S. W.) 500.00 sub. lot 119, Sq. 981,		65.
(East 80 ft. by front) (814-12th St., N. E.) 2,500.00		67.
lot 50, Sq. 937, (419-9th St., N. E.) 3,000.00		68.
, Edgewood 673.45)		00.
, Edgewood 300.00	pt.	72.
21-22-23-24, Edgewood 1,809.36)		
ares Northern R. R. Co.		
2,499.00	1	47
ares Bigelow Carpet Co 2,125.00	pt.	48

### (4.) TO BE HELD JOINTLY.

#### Notes.

4. Brown, Lee, 2 mortgage On list as \$1,387. Subject to \$2,000.	Face value. \$1,400.	Valuation. \$500
1st mortgage. 9. Groff, D. B., doubtful. 15. " " " 23. McLeran, insufficiently secured. 34. Stein, 2nd mortgage, subject to \$2,500.	2,000. 5,440. 3,500.	2,500. 2,500.
trust, value 2,750.  5. Crowley  45. Worthless (Herr)  46. "(Thompson)	1,232. 500. 140. 10.	500. 500. 000. 000.
Total	\$14,222.00	\$6,500.00
Other Property.		
<ul> <li>57. 1739 H Street.</li> <li>74. Araby Farm</li> <li>49. 10 Shares Florida Coast Line Railroad.</li> <li>50. 9 Bonds Florida Coast Line Railroad.</li> <li>51. 1 Certificate indebtedness Florida Coast road</li> </ul>	Line Rail-	35,000. 15,000. 000. 000.
Total		\$50,000.00

### JNO. A. BAKER. ARTHUR D. ADDISON

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## Decree for Partial Distribution.

## Filed July 9, 1909

On considering the petition of Alexander Richardson Magruder and Isabel Richardson Magruder, parties in this cause who have signed said petition by the names of Alexander R. Magruder and Isabel R. Magruder, and the exhibits attached thereto this day filed, and the answers of the trustees it is this 9th day of July, in the year one thousand nine hundred and nine, by the Court in Equity sitting, adjudged, ordered and decreed:

First. That the said Alexander R. Magruder, having attained the age of twenty-ix years on the seventeenth day of January, in the year ninet on hundred and nine, thereupon became and is entitled, under the provisions of the last will and testament of his grandfather, William A. Richardson, deceased, to one equal share or half of the estate of the said testator, and the said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder, trustees heretofore

5-2265A

appointed by this Court to execute the trusts created by said will, be and they are hereby authorized and directed to turn over, endorse, assign, transfer, convey and deliver to the said Alexander R. Magruder all the promissory notes, securities, pieces of ground and premises and the proceeds thereof, except as hereinafter provided, described in the schedule and exhibit Magruder Exhibit D under the heading "Allotment B", filed with and referred to in the aforesaid petition,

it being agreed by all the parties to this cause that said promissory notes, real estate and other property described under said Allotment B constitute in value one equal part or half of the property described in the statement made by said trustees, referred to in said petition as "Magruder Exhibit C", and it being also agreed that the division and apportionment of the trust funds and property described in said statement "Magruder Exhibit C"

shall be made as stated in said "Magruder Exhibit D' Second. That the said Isabel R. Magruder, having attained the age of twenty-three years on the twentieth day of April, in the year nineteen hundred and nine, thereupon became and is entitled, under the provisions of the last will and testament of her grandfather, the said William A. Richardson, deceased, to one-fourth part or share of the said estate, and the said trustees, heretofore appointed as aforesaid, be and they are hereby authorized and directed to turn over. endorse, assign, transfer, convey and deliver to the said Isabel R. Magruder, or as she may direct, all the pieces or parcels of ground and premises, securities and other property and the proceeds thereof. except as hereinafter provided, described in said schedule and exhibit marked Magruder Exhibit D under the heading "Allotment A", (excepting, however, the notes and the two pieces or parcels of ground included therein described as sub-lot 104, in Square 623, in the City of Washington, D. C., and lot 9 in Block 6 in the sub-division of land known as "Edgewood", in the District of Columbia). it being agreed by all the parties to this cause that all the real estate

and securities described in said Allotment A, together with one-half of the property hereinafter described and directed to be conveyed to the said Alexander R. Magruder and the said Isabel R. Magruder to be held jointly by them, constitute in value one-half part of the estate of the said William A. Richardson, deceased, described and enumerated in the said statement so made by the said trustees as of January 17, 1909, and marked "Magruder Exhibit C".

Third. That it appearing by the said will and testament of the said William A. Richardson, deceased, that as to the other one-fourth part of said estate which the said Isabel R. Magruder is not entitled to receive until she attains the age of twenty-six years, and that in the meantime said one-fourth part of said estate is to be held in trust under the conditions imposed by said will, and it appearing from the answer of the said trustees that they are willing and desire that they may be relieved and discharged from said trusts so far as they relate to said one-fourth part of said estate, as hereinbefore defined and described, and that the American Security and Trust Company of Washington, D. C., may be appointed trustee in their place and

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stead, and that the petitioners desire that such substitution of trustees be made by this Court, the said American Security and Trust Company, of Washington, D. C., be and it is hereby made, constituted and appointed trustee in the place and stead of the aforesaid trustees to execute, carry out and perform the trusts created and imposed by the last will and testament of the said William A. Richardson, deceased, in respect of and so far as the same relate to

the one-fourth part of said estate and property particularly described and enumerated in said schedule or exhibit marked "Magrader Exhibit D", and under the heading Allotment A, and consisting of the promissory notes therein described, amounting to sixty-three thousand four hundred and forty-two dollars and sixtytwo cents (\$63,442.62), and the proceeds thereof, except as hereinafter provided, and the two pieces or parcels of land known as sublot 104 in Square 623, Washington, D. C., and lot 9 in Block 6, in the sub-division of land known as "Edgewood" in the District of Columbia, and in respect of any other property, land, money or securities that may hereafter be ascertained and determined to belong or to be a part of said one-fourth part or interest in said estate which is to be held in trust under the provisions of said will, to hold the said promissory notes and the proceeds thereof and the said pieces or parcels of land in and upon the trusts created and imposed thereon by the provisions of the said last will and testament of the said William A. Richardson, deceased, and the said trustees Samuel A. Drury, Samuel Maddox and Alexander R. Magruder are hereby divested of all right, title and interest in and to said promissory notes and the proceeds thereof and the said pieces or parcels of ground, and in and to all property and moneys that may hereafter be found to constitute or belong to said one-fourth part of said estate, and the right, title and interest therein and thereto is hereby vested in the said American Security and Trust Company

to hold the same as trustee in and upon the trusts as aforesaid, it being agreed by all the parties hereto that said promissory - and said pieces or parcels of ground are to be fairly considered as constituting one-fourth part in value of the said estate as described in said statement Magruder Exhibit C as of January

The said Samuel A. Drury, Samuel Maddox and Alexander R. Magruder, trustees as aforesaid, are hereby authorized and directed to endorse, assign, transfer, convey and deliver to the said American Security and Trust Company, submitted trustee as aforesaid, by such endorsements, transfers and conveyances as may be necessary, the aforesaid promissory notes and the proceeds thereof and said pieces or parcels of land to be held by said substituted trustee upon

Fourth, That the said Samuel A. Drury, Samuel Maddox and Mexander R. Magruder, trustees as aforesaid, are hereby authorized and directed to endorse, assign, transfer, convey and deliver, by proper conveyances and deeds, to the said Alexander R. Magruder and Isabel R Magruder, as joint owners and tenants in common, the stocks, notes and property described in the said Magruder Exhibit

D, under the heading "To be held jointly", "notes" and "other property", as follows:

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	Face value.	Valuation.
4. Brown, Lee, 2 mortgage On list as \$1,387. Subject to \$2,000. 1st mortgage.	\$1,400.	<b>\$500</b> .
73 9. Groff, D. B., doubtful 15. " " " "	2,000. 5,440.	2,500.
23. McLeran, insufficiently secured 34. Stein, 2nd mortgage, subject to \$2,500.	3,500.	2,500.
trust, value \$2,750	1,232.	500.
5. Crowley	500.	500.
45. Worthless (Herr)	140.	000.
46. " (Thompson)	10.	000.
Total	314,222.00	\$6,500.00
Other Property.		
57. 1739 H Street		35,000.
74. Araby Farm		15,000.
49. 10 Shares Florida Coast Line Railroad.		000.
50. 9 Bonds Florida Coast Line Railroad		000.
51. 1 Certificate indebtedness Florida C. L. R	. R	000.
Total		\$50,000.00

Fifth. It appearing to the Court that since the making of the statement by the trustees as to the property comprising said estate as of January 17, 1909, certain of the notes described in said statement and in the schedule marked Magruder Exhibit D, referred to in the petition filed herein, have been paid and that the proceeds thereof are now in the possession of the trustees, as is shown by the answer of the trustees, it is further adjudged, ordered and decreed that said several sums of money, amounting to eleven thousand one hundred and eighty-seven dollars and seventy-eight cents (\$11,187.78), be not paid over and distributed according to said schedule of

not paid over and distributed according to said schedule of allotment, but shall be held by and retained in the possession of the trustees until the settlement of the trustees'accounts and the ascertainment of the amounts found to be due and payable to said trustees for compensation or commissions and for costs of court and shall be proportionately chargeable, if found necessary, with the payment of the compensation, commissions and costs that may be found to be due as aforesaid, and whatever remains after the adjustment and payment of the compensation, commissions and costs as aforesaid, shall be disposed of according to the division and allotment specified in said schedule or table marked Magruder Exhibit D, and, for the purpose of having stated the accounts of said trustees and each of them and of having ascertained what, if anything, is justly due them and each of them for compensation and

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commissions and the costs of court, and what, if anything, is due said estate from them and what property, if any, belonging to said estate remains in the possession of said trustees and not disposed of by this decree and in order to receive, consider and pass upon the accounts of the trustee hereby appointed in respect of the property and that part of said estate which is to be held in trust until the petitioner Isabel R. Magruder attains the age of twenty-six years and to make such other supplemental and final decrees as may be required and found necessary for the settlement of said estate and the final determination of this cause, this cause is retained in this court and remains subject to the further orders and decrees that the court may find it necessary to enter herein.

JOB BARNARD, Justice.

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Order Referring Cause to Auditor.

Filed February 3, 1910.

It appearing to the Court that the late Auditor of the Court made no report herein, under the order of reference passed on the 15th day of January, 1909, it is, on motion of the trustees, this 3rd day of February, 1910, ordered that this cause be, and it is hereby, referred to the Auditor to state the final account of the trustees and the distribution of the trust estate in their hands, and report such commission or compensation to the trustees as may be appropriate and proper; also to state the account of said trustees in respect of what is known as the "Eliza C. Magruder trust".

By the Court:

THOS. H. ANDERSON.

Auditor's Report.

Filed March 16, 1910.

This cause was referred to the Auditor by two separate orders, one of January 15, 1909, directing the statement of the trustees account as of January 17, 1909, and the order of date February 3. 1910, directing me to "state the final account of the trustees and the distribution of the trust estate in their hands, and report such commission or compensation to the trustees as may be 76 appropriate and proper; also to state the account of the said trustees in respect of what is known as the Eliza C. Magruder trust".

The reference was duly proceeded with by my predecessor in office, a number of hearings being had, and some testimony taken before him, and a Sixth and Sixth Supplemental accounts, together with some exhibits being filed with him. Among the exhibits so filed are five papers; one a "list of assets" of the estate, which I have marked "Auditor's Exhibit No. 1"; another a résumé of the items of principal estate shown by the Auditor's previous reports in this cause, corrected according to the trustees' view, upon which they claim commission should be based; which paper I have marked "Auditor's Exhibit No. 2"; another containing a very full statement of the services of the trustees in connection with the trust, and a corrected or revised statement of the "Auditor's first account as they claim it should have been made (which revision or correction was made in pursuance of an apparent understanding by counsel on both sides at that time, that the said account would be opened, and which will be adverted to later), which paper I have marked "Auditor's Exhibit No. 3"; another, a statement of the monies of the trust converted into realty, which I have marked "Auditor's Exhibit No. 4"; and lastly a statement of the objections to the trustees' claims of commissions, which I have marked "Auditor's Exhibit No. 4"; and lastly a statement of the objections to the

Exhibit No. 5". As to the dates of filing these papers, the only record I find is in "Auditor's Exhibit No. 5", as to Auditor's Exhibits Nos. 2, 3, and 5, and in a letter from Mr Maddox to the Auditor respecting No. 4. The dates, as so ascertained, are noted on the respective papers. I return herewith the testimony and exhibits noted therein; statements of account by the trustees and the exhibits before mentioned; exhibits filed with me; and, hereto annexed, the Schedules showing the accounts of the

trustees as stated by me.

Whatever else may have been contemplated in the recent proceed ings in this cause, the present reference outside of the usual and proper audit of the accounts of the trustees here submitted, resolves itself into a controversy as to the proper allowances to be made to the trustees on final accounting, for their services in the execution of this trust, by way of commissions or otherwise. In the previous reports of the Auditor, five in number, they have been uniformly allowed ten per cent on the net income received by them, and five per cent on certain receipts of principal estate, being proceeds of realty sold by them. In the present audit, which will terminate their trust, they claim the same allowances and five per cent upon the body of the estate upon which they have received no commissions. consisting of the notes, stocks and cash received by them from the executors, and certain sales of real estate (see testimony pages 3-6), and ten per cent on the income. The trustees waive any claim to commissions on the household effects, carriages, etc., appearing in their accounts, and also on the value of the real estate originally received by them and not sold, but remaining in the trust.

78 For the purpose of eliminating preliminary to my final conclusions (as to reasonable allowances to the trustees for their services) certain of the points in controversy in the reference. I shall first take up the objections to the claims of the trustees, "Anditor's Exhibit No. 5".

The first objection is to the credit of \$18,800 allowed to the executors, in way of commissions on their final accounting

With respect to this item the facts are that the allowance was made by the Probate Court of Middlesex County, Massachusetts, in

the final account of the executors, as will be seen by reference to "Magruder Exhibit B", accompanying the petition filed in this cause June 16, 1909; and that the allowance was also made by the Auditor of this Court in his first report filed December 19, 1900. The controversy over this item developed the fact that the account in the Probate Court in Massachusetts was settled as of April 24, 1809, when the estate was turned over to the trustees, while the account of the trustees in the first report of the Auditor began on April 1, 1899, the date of the appointment of the trustees by this Court, an overlapping period of twenty-four days; hence the appearance of the item by error in both accounts. The effect of this error was not in any way to disturb the actual debit and credit status of the estate account, which was kept by Mr. Samuel A. Drury, one of the executors as well as one of the trustees, in a continuing form (see testimony pages 12 and 16), or to cause a double allowance.

By reason of the objection on the one hand and because of the desire of the trustees to have the first account of the Auditor reformed in order to arrive at the facts with respect to the exact amount of principal estate turned over to the trustees, the tacit understanding appears to have been arrived at by counsel that the account should be reopened, and in pursuance therewith, as stated, was filed Auditor's Exhibit No. 3. My conclusion with respect to this objection, of which I informed counsel (upon my preliminary survey of the pleadings, the Auditor's reports, and proceedings before the Auditor in this reference, including the briefs filed). was that I had no authority to open an account of the Auditor confirmed by the Court without the specific direction of the Court; that therefore neither would I reform the Auditor's first account or pass upon the propriety of the allowance to the executors. It seems to me, also, that even if I could or would reopen the Auditor's report, the allowance by the Massachusetts Court could not be reviewed by this Court, which has no jurisdiction of the Executors or their ac-

At the same time it was manifest in an estate of this size, where the transactions were so numerous, the securities and other items of account were shifting daily during this overlapping period of twenty-four days, including the final settlement in Massachusetts, and this payment to the executors, and that some method would have to be determined upon to ascertain the principal of the estate received by the trustees on the 24th of April, for the purpose of fixing the commissions. This will be treated of later in the report.

It should be stated that in the course of the reference coursel for the cestuis que trust shifted his position on this actually opening the report of the Auditor, in determining a reasonable allowance to the trustees

The second objection is to the credits for payment made to Samuel Maddox, trustee, for professional services rendered after his appointment. From examination of the record, more particularly Exhibits S. M. #3 and S. M. #5, the testimony at page 59, and the Auditor's reports filed December 19, 1900 (Schedule A) and February 1900 (Schedule A)

ruary 21, 1906 (Schedule G), it would appear that the allowances to Mr. Maddox were for services rendered previous to his appointment, in connection with the filing of the bill in this proceeding on behalf of the beneficiaries of the trust and with certain suits brought by the executors; except as to the item of \$200 allowed in the Auditor's report of February 21, 1906, which was for a suit to quiet title to certain real estate. Outside of the answer to this objection like to the other, that the allowances have been previously made by the Auditor, and confirmed by the Court, I do not regard them as improper; the charges were reasonable and it is not unusual to allow trustees, who are members of the bar compensation for professional services rendered, which are not ordinarily within the scope of their duties as trustees. The trustees, however, consent and request that this latter item of \$200 be sur-charged, and I have acted accordingly.

The third objection is to the credits for payments of com-81 missions paid to agents, for the collection of rents, in the third, fourth and fifth reports of the Auditor; and similar payments reported by the trustees in this audit. The same conclusion with respect to my authority to sur-charge the previous allowances of the Auditor would apply to these items. Beside, I am inclined to the view that they were not nurcasonable after contemplation of the history of this case, and would, in the absence of objection, and perhaps over objection, have made the same allowances in this audit. The trustees, however, consent that the expenditures for that purpose in this account be not allowed and that the previous allowances of the same character be sur-charged, and my Schedules are framed accordingly. For the purpose of making the account more perspicuous, I have allowed the expenditure in the general income account in this audit, but have sur-charged it in the Schedule setting out the allowances to the trustees. It is proper that I should call attention to a difference in this item between the amount reported by the trustees and the amount found in my Schedules. This difference is the result of my examination of the books of the trustees, which show that the amount reported by them as paid agents was incorrect, in that it appeared to be the total of their ledger "expense" account which included the sum of \$82.00 not paid to agents, but for other items, to wit: \$12.00 for renairs, \$20.00 for bond of A. R. Magruder as associate trustees, and \$50.00 for rentals of the trustees' safe deposit box. The first and last items are allowed

in the account under their proper heads; the second one I have disallowed; and I reduce the credit of total amounts paid to agents by the sum of the three, making the sur-charge of the corrected amount accordingly

The fourth objection is to the allowance to the trustees of ten per cent (10%) on income

The fifth objection is to the allowance to them of five per cent (5%) on sales of realty, including the allowances at that rate made in previous reports of the Auditor

The sixth objection is to the allowance to them of five per cent (5%) on the principal estate turned over to the beneficiaries, either

on the securities in the personal estate or on the sum total of personal estate converted into realty. These three objections will be treated

of in my final conclusions in this report later on.

The seventh objection is to the allowance of \$849.98 to the trustees in the third report of the Auditor, being ten per cent on certain desperate debts reported as collected, but which, it appears, were not actually collected, being merged into a real estate transaction. The objection is nugatory, however, because I find upon examination that though the allowance was reported by the Auditor at the conclusion of one of his Schedules, it was not actually credited in the Schedule in that or any subsequent report, and credit for it has never been claimed or taken by the trustees.

The eighth objection is to the "retention by Arms & Drury" of profits realized by them on trust notes which they sold to the trustees, and insurance placed by them for the trustees,

83 The item of commission on insurance appears to be small (testimony page 59) while the other item would be considerable in amount (testimony pages 8, 27-9, 35, 33, 43-4). It would appear from the testimony (pages 8-9, 25-36, 43-4, 51-2, and 59) that the real contention of counsel is that the trustees should be sur-charged with these profits. Subsequently, however, in the argument, countsel shifted his contention to the claim that the Auditor, in arriving at his final conclusions with respect to the reasonable allowance to the trustees, take into consideration the profits and advantage resulting to Mr. Drury from his transactions with respect to these notes by reason of the relation of his firm to himself as trustee, more particular larly in the opportunities afforded him to make ready and desirable sales of these notes. The fact clearly appears from the testimony that Arms & Drury as real estate brokers, made loans on trust notes, upon which loans they were paid by the borrowers a commission ranging from one to two per cent, according to the circumstantes of the case, many being building loans; that subsequently as notes of the trust estate were paid off Mr. Drury would reinvest the manies of the estate in trust notes held by Arms & Drury, paying the face value and accrued interest on the notes so purchased; and that Arms & Drury placed the insurance for the trustees, upon which they were paid the usual brokerage commissions by the Insurance Companies

I see no force in any of these various contentions of counsel that the employment of Mr. Maddox in professional matters, 84 or the employment of the firm of Arms & Drury to collect rents, and place insurance, or that the sale by Arms & Drury of trust notes to the trustees, have any bearing on the question here presented for determination and report. The customs with respect to these transactions are so well known and so well fixed that it might perhaps be well claimed the Court may take judicial notice For these purposes other counsel, if not Mr. Maddox, would necessarily have been employed; other agents, if not Arms & Drury, would properly have been applied to for insurance; other individual brokers, if not Arms & Drury, or banks, would necessarily have been applied to for investments. It appears from the testimony that nothing was done out of the usual and proper course

in these transactions by reason of the individual relations of Mr. Maddox or Mr. Drury to themselves as trustees. For the collections of rents the usual and proper commissions were paid; for the placing of insurance the usual and proper commissions were paid by the insurance companies; for the notes purchased by the trustees the amounts paid were invariably the face of the note and accrued interest. No profit was made by the firm of Arms & Drury on the sales of the notes to the trustees, (testimony page 52). The transactions of Arms & Drury with the trustees were in the regular course of their business, in which they had their own monies invested They cost the estate not a penny more than if the transactions had been with some other firm or individual. If the firm of Arms & Drury, out of their own monies, made loans on promissory

notes, upon which loans were paid by the borrower the customary brokerages, those were profits on their own funds. in which this estate could have no interest, and in which it could acquire no interest by reason of the subsequent purchase of those notes by the trustees for their real value, any more than could any of the purchasers of such notes from Arms & Drury claim such an interest. No charge of malfeasence or misfeasence is made against the trustees or that by reason of these transactions the trustees benefited in any manner out of the money of this estate On the contrary, the relation of the firm of Arms & Drury to Drury and Maddox, trustees, benefited the estate, by enabling the trustees at all times to make immediate re-investment of its funds, without loss of income, and by enabling the trustees to at all times readily procure re-investments without payment of brokerage a brokerage not uncommonly charged the lender for placing his money, as well as the borrower for procuring his loan in times of stringency. application of the well known rule in equity should rather, therefore, be in favor of the trustees than against them with respect to these transactions. The objection narrows itself to a claim that Drury, by reason of his position as trustee, should in addition to the benefits of his valuable services, commercial knowledge, and business acumen make the estate a gift of profits on his individual monies, to which the estate is in nowise entitled, and to which it could not make a semblance of reasonable claim, had the trustees been other than Drury or the agents of the estate been other than Arms and Drury.

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The ninth objection is rather a claim than an objection that Alexander R. Magruder should share in the allowance to the trustees, with Drury & Maddox. For the purpose of passing upon this claim the relations of Alexander R. Magruder to the office of trustee should be briefly stated. By the will of the creator of this trust. William A. Richardson, it was provided:

"I also nominate my grandson. Alexander Richardson Magruder to be appointed by the Probate Court an additional co-executor with my brother and Mr. Drury when he attains the age of twenty-one years, without sureties of his official bond. I make this latter nomination because Alexander has a special interest in some trust estates in my hands which he can look to when he becomes older and

because I am anxious that Alexander should early learn a knowledge of business and acquire good business ideas and habits, and I join him as one of the co-executors because I think it will afford him an

opportunity of doing so".

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Under this provision of Judge Richardson's will, the Court, in this cause, on the 18th of April, 1906, on the petition of Mr. Magruder, presented and filed by Mr. Maddox, one of the trustees and his counsel in this cause, appointed Mr. Magruder a co-trustee It appears from the record, however, that Mr. Magruder never took any part in the management of the estate or the execution of the

trust, and as a matter of fact has not resided in Washington since his appointment (testimony pages 64-8 and the peti-87 tion of Alexander R. Magruder filed in this cause June 16, 1909, page 4, paragraph 2). Moreover, by the will of Judge Richard-

son, it was provided also as follows:

"I desire that my executors shall be paid each for the actual services rendered by himself only, and that they shall not be re-

sponsible for each other's acts".

From a reading of the will of Judge Richardson, it will be seen that the designation of "co-executors" is inartificially used, they being by the will itself created trustees as well as executors. Moreover, in equity allowances to the trustees, unlike allowances in Probate to executors and administrators, are not necessarily to be subjected to an equal division. I find, therefore, no foundation for this claim; and the allowances made in this report are to Samuel Maddox and Samuel A. Drury, jointly, excluding Alexander R. Magruder. The remaining observations of the memorandum of objections

are met by subsequent developments in this cause.

First, the trustees have submitted their final account of the trust, and it is covered by this audit.

Second, the estate has been delivered and distributed under decree of this Court of July 9, 1909, to the beneficiaries; to Alexander R. Magruder, his moiety; to Isabelle R. Magruder the one fourth part to which she is now entitled; to the substituted

trustee, the American Security and Trust Company, the remaining one-fourth part of the estate in trust for Isabelle R. Magruder; except, however, the cash remaining in the hands of these trustees, pending the determination of their claim to com-

Third, the desperate and doubtful notes reported and listed in the executor's account and the first report of the Auditor, have been turned over to counsel for the beneficiaries (testimony pages 60-2 63-4) excepting two small ones which passed from the hands of the trustees after collections on or cancellation of the same (testimony pages 10-11)

In this connection attention is called to the pleadings and pro

ceedings in this cause, June 16, and July 9, 1909

In the course of his reference, the trustees in the testimony and in ome of the exhibits filed, more especially Ex. S. M. #4, and Auditor's Ex. No. 4, in their various endeavors to submit calculations as to the foundation for commissions, apparently claim that calculations of commissions should be segregated upon the personal estate turned over and the personal estate converted into realty. This developed in cross-examination of Mr. Drury (testimony pages 25-6, and 34-43), the apparent contention, or intention of a contention on the part of counsel for the beneficiaries, that commissions should not be allowed on certain of the notes turned over by the trustees, on the ground that these notes formed part of the

purchase money on sales of real estate on which sales com-89 missions had been allowed or were claimed. I have not regarded any of the analytical statements of the trustees as having any conclusive bearing on their general claim to commissions or as affecting the usual and proper practice of basing commissions on the estate coming into the hands of fiduciaries: treating them in this reference merely as explanatory memoranda submitted for the purpose of enlightening the Auditor. In my final conclusions as to the allowances to the trustees. I have adopted the figures given in the first report of the Auditor of the principal estate in the hands of the trustees (executors) April 1, 1899, and from the eash book of the executors and trustees I have ascertained the amount of notes and cash collected between that date and April 25th, when the trustees received the estate, and deducted it from the total of the estate given by the Auditor in order to arrive at the actual principal estate received by the trustees. This practically eliminates the question apparently raised in the record, for the reason that none of these notes on which commission is objected to. is among these received by the trustees. I may state further that after careful examination into the various transactions with respect to the realty I find that in only two instances have the trustees received or claimed commissions on real estate into which some of the notes of the estate were converted, viz: the sale of Lot 104. Square 623, and the sale of #421 9th Street. My attention was first drawn to this apparent contention after the preparation of the Schedules; and while it would seem that properly the amount of

these notes should be eliminated from the calculation of commissions, the commissions would approximate \$300, and in view of the waivers of the trustees of other items which have been already allowed to them, and of the general considerations which I shall hereafter advert to, I have not felt called upon to further prolong the labor of the audit and increase the expense by re-easting the Schedules. As near as I can ascertain the amount of notes carried into these transactions was \$6,050, and if the Court sees fit, I suggest that the deduction of five per cent (5%) on that

amount be made in the decree.

I shall not extend this report by reviewing at length the dealings of the trustees with this estate, but refer the Court for a particular account thereof in large part to the detailed statement of the trustees contained in Auditor's Exhibit 3, pages 38-55 inclusive. The history of this trust estate covers a period of over ten years from April 24th, 1899, to July, 1909, when distribution was practically made. The transactions of the executors extend through a period of about two years and one-half anterior thereto, beginning in the

winter of 1896. The estate consisted, outside of some small amounts of cash and stocks, of twenty-nine pieces of improved real estate, including the homestead, and thirteen unimproved suburban lots; and trust notes listed as good aggregating over \$248,000 and trust notes listed as doubtful or desperate aggregating nearly \$27,000.

Of the notes received by the trustees the great bulk were second trust notes; by far the larger number were for small sums; many of them were monthly payment notes; some of the 91 doubtful and desperate ones were collected; as to others there was difficulty of collection, involving considerable correspondence and other professional services on the part of Mr. Maddox, one of the trustees. The transactions with respect to these notes were almost innumerable. The total number of the same approximates

three thousand (Auditor's Exhibit #3, pages 51-5).

With respect to the real estate, it appears that the trustees collected the rents, looked after the repairs and the payment for the same, paid taxes, and kept the property insured. For a large part of the time this was done by the trustees without the intervention of agents, and in this accounting they are charged back with the payments made to agents in the latter part of the time covered by the trust. This included their services in these respects as to the homestead, 1739 H Street, which has been occupied by the family and yielded no income upon which the trustees could receive commissions. From an examination of the Auditor's reports and the statement of the trustees above referred to, and Auditor's Exhibit #4, it appears that the trustees have paid off thirty-three trusts aggregating over \$100,000, including the trust upon the homestead; acquired twentyfour parcels by foreclosure and one parcel by deed without foreclosure; sold sixteen parcels and two party walls; bought four parcels; and secured the cancellation of taxes and perfected the title to one parcel; all of these transactions involving great responsibility

and extensive services on the part of the trustees. They 99 have passed over to the beneficiaries thirty-one parcels of realty upon which they have received commissions only in part, that is, their commissions on rents collected from the same and their commissions on notes converted into the same. Among them is the homestead of the value of \$35,000, for their services in connection with which they have never received a dollar. Neither has there been paid any money by the estate for the professional services of Mr. Maddox, necessarily involved in all of these transactions with respect to trusts, foreclosures, sales and purchases. When the estate was delivered to the beneficiaries it may be said that practically all of it consisted of the real estate before mentioned, and first trust notes well secured, in contradistinction to the negligible character of the estate when it was received; and it was little less in amount than the estate originally received by them, although it had supplied the beneficiaries with an income of \$8,400 per year during the period of the trust. The trustees have given the services of a trained and experienced business man in real estate matters and a trained and experienced member of this bar during all these years in the execution of this trust, services which have been highly creditable to them

and beneficial to the estate in every respect. I have no hesitancy in finding that the trustees are well entitled to the commissions which they claim, five per cent on that part of the principal upon which they have received no commissions and ten per cent on the income. I have accordingly made these allowances in this audit.

In Schedule A I have stated the principal account of the 93 trustees, charging them with the balance shown by the last report of the Auditor and collections since; crediting them with the costs of this reference and the amount of cash transferred to Schedule F to meet the deficiency of income; and showing the items of the principal estate remaining in their hands on final accounting. From the balance of cash shown by this Schedule I deduct the allowances to the trustees in Schedule J and show the balance of the principal estate to be turned over by them after the deduction of these allowances.

In Schedule B I have stated the principal cash account of the

trustees, the balance of which is carried into Schedule A.

In Schedule C I have stated the principal note account of the trustees, showing the transactions in the collections and purchase of notes, and the notes remaining in the hands of the trustees in detail and by description, the total of which is carried into Schedule  $\Lambda$ .

Iu Schedule D I have stated the account of notes paid and purchased, and the balance of each not reinvested which forms a part

of the cash shown by the Schedules A and B.

In Schedule E I have reported a description generally of the real

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estate in the trust.

In Schedule F I have stated the income account of the trustees, charging them with collections of interest, dividends, rents, etc.,

and crediting them with payments for taxes, water rents, re-94 pairs, insurance, commissions to agents, (subsequently surcharged) expenses of sales, sundry small items and payments to the beneficiaries. The excess of expenditures is made up by transfer from principal each account of the necessary amount.

In Schedule G I have stated the principal account of the Eliza C

Magruder trust.

In Schedule H I have stated the income account of the Eliza C.

Magruder trust.

These accounts are brought down to February 8, 1910. The trustees have not claimed or received commissions in their accounts of

this trust.

Schedule I shows the basis upon which allowances should be made to the trustees on account of the principal estate, and the income Taking the amount of principal estate shown by the first report of the Auditor, I have added certain notes not included therein, and the proceeds of sales of real estate and judgment against the United States. From this I have deducted the amount of principal covered by the account of the executors from April 1 to April 24th, taken by me from the books of the trustees for that period. I have also deducted certain notes dropped as uncollectable, certain erroneous debits, and the appraised value of the household effects upon which the trustees ask no commissions. The balance is the net personal

estate upon which the trustees would be entitled to commissions. Coming to the income, I have aided the totals of income shown by the previous reports of the Auditor and this report and deducted the amount upon which commissions were previously allowed 9.5

by the Auditor; the balance shown is the amount upon which the trustees are entitled to commission, being income re-

ported in this account.

In Schedule J I have stated the allowances of commissions to Samuel A. Drury and Samuel Maddox, trustees; calculating them at five per cent on the net principal estate less the allowances previously made by the Auditor. These allowances I have recapitulated and from them deduct the items which the trustees consent should be charged back, that is, the payments to agents for commissions and counsel fee to one of the trustees. This recapitulation also shows the balance of cash in the hands of the trustees after the deduction of these allowances, the same as is shown in Schedule A.

It is unnecessary to report the distribution of the estate in view of the decree of July 9, 1909 directing allotment and distribution. Sup-

plemental distribution may be provided in the decree.

## LOUIS A. DENT, Auditor.

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#### SCHEDULE C.

## Principal Note Account.

#### Dr.

To Amount of promissory notes in hand per Sched- ule C of last report of Auditor.  Notes purchased since, per Schedule D of this re- port	138,642.00 26,996.00
Cr.	165,638.00
By Notes paid since last report per Schedule D of this report	38,587.84
Balance in hand	127,050.16
Consisting of the following notes Aguilar, Y, dated May 28, 1907 at 2 years, 5%, secured on Square 207, Lot 78.  Brewer, M. B., dated Aug. 2, 1895 at 2 years \$7. secured on Square 214, points of 1.	
parts of Lots 10 and 11.  Brown, Lee, dated Nov. 2, 1908, at 2 years, 5%, secured on Square 937, Lot	
51 2,000.00	
3,000.00	

97	
Forward Brown, Lee, instalments, dated Nov. 2, 1908, \$1400, instalment secured on	3,000.00
Square 937, Lot 51.  Daingerfield, Wm. D. Dated July 1, 1895, at 5 years, 5% secured on Square	1,294.16
209, Lot 20, Balance	3,000.00
years, 5%, secured on Square 812, Lot 37.  Angler, M. R., dated July 1, 1907, 3	2,000.00
years, 5%, secured on Square 1029, Sublot 150	1,000.00
1, 1895, secured on Square 754, Lot 92, \$2,500	10,000.00
5%, secured on Square 780, Lot 47	2,000.00
98 Forward	22,294.16
Forward	22,294.16
1898, 6%	1,500,00
6% Holman, B. W. dated Feb. 6, 1895, 3 years, 5%, Block 19, Lot 7, Mt. Pleas-	5,440.00
ant, Balance	2,500.00
6% secured on Square 1029, Lot 186. King, Charles W., Jr., 2 Notes \$1000 each and 2 notes \$500 each, Nov. 8.	1,750,00
1905, 5½%, secured on Lot 571, King's subdivision Mt. Pleasant King, Charles W., Jr., 2 notes \$1000 each, and 2 of \$500 each Nov. 8, 1905,	3,000.00
5½%, secured on Lot 569, King's subdivision, Mt. Pleasant.  King, Charles W., Jr., 2 notes, \$15,000 each, dated June 20, 1899, 3 years, 5%, secured on Lots 322, 323, 324	3,000,00
and 325, King's sub-division, Mt. Pleasant	30,000.00
Forward	69,484.16

99	
Forward Lowry, Geo. C., 2 notes, \$1000 each and 1 note \$500, dated Feb. 26, 1907, 3	69,484.16
1 note \$500, dated Feb. 26, 1907, 3 years, 5%, secured on Square 10, Lot 60, More and Barbour's addition	2,500.00
5 years, 6%, secured on Block 24, Lots 7 and 8, Wesley Heights Mazzei, Frank K. and Ella, dated May	3,500.00
25, 1900, 5 years, 6%, secured on Square 368, Lot 8	4,000.00
July 8, 1900, payable monthly, 6%, secured on Square 887, Lot 69  Newton, George P., Balance dated April 24, 1893 at 5 years, 6% secured on	130.00
Square 1029, Lot 84.	750.00
Forward	80,364.16
100	
Forward Palmer, Wm. J., dated Nov. 1, 1899, 3 notes \$2000 each 5 years, 5%, secured	80,364.16
on Block 21, Lots 23, 24 and 26, respectively, Dobbins addition.  Palmer, Wm. J., dated Nov. 1, 1899, 3 notes, \$500 each, 5 years, 5%, secured on Block 21, Lots 23, 24	6,000.00
on Block 21, Lots 23, 24 and 26, respectively, Dobbins addition.  Richold, Leopold, dated Apr., 20, 1907, 5 years, 5%, secured on Square 420,	1,500.00
Lot 19 Richold, Leopold, dated April 20, 1907, 5 years, 5%, secured on Square 420,	4,000.00
Robinson, Jesse D., 11 notes, \$500 each, dated Oct. 1, 1902, six to seventeen years, 5%, secured on Square 107,	5,000.00
Stein, Robert, 37 notes \$28 each dated Oct. 24, 1907, payable monthly, 60	5,500.00
secured on Square 754, Lot 95	1,036.00

50	ALEXANDER R. MAGRUDER	R ET AL. VS.	
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Forward Wardman each, au 26, 190	Harry, three notes \$2,000 and 3 of \$500 each, dated Feb. 7, 3 years, 5%, secured on 2825, Lots 12, 13 and 14 re-	103,400.16	
spective.	y	7,500.00	
Wardman dated C secured bian He Wardman dated O cured or	Harry, two notes \$2000 each, oct. 25th, 1907, 3 years, 5%, on Block 36, Lot 63, Columbights. Harry, 12 notes, \$1,000 each, et. 25, 1907, 3 years, 5%, sen Block 36, Lots 60, 61 and 62.	4,000.00	
Columbi	ia Heights	12,000.00	
trust ma	iny years due, probably worth- H., long past due, probably	10.00	
worthles	s	140.00	
		127,050.16	
	LO	UIS A. DENT,	Auditor.
102	2		
102	SCHEDULE F.		
	Account of Incom	ne.	
	Dr.		
Rents	t collected on promissory notes ads collected collected on insurance	• • • • • • • • • • • • • • • • • • • •	$17,484.05 \\984.00 \\7,843.55 \\1.10$
			26,312.70
D 70	Cr.		
Water Repairs Insurar Commi Auction Stree Cash B Trustee lease Adverti	rents nee ssions to agents neer for sale, #47 Defrees t look s, notary, and recording re- , #421 9th Street, N. E. sing #47 Defrees St. , notary and recording deeds, Defrees Street	4,614.12 208.64 1,764.95 235.16 408.21 11.00 3.00 3.95 33.83	
		9.80	

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Copy of deed to Araby	1 85	
Paid A. F. Magruder, Guardian  "Isabel R. Magruder.  "Alex. R. Magruder.	233.34 $9.916.66$	
Transferred from principal account	27,697.01	1,384.31
Totals	27,697.01	27,697.01

LOUIS A. DENT, Auditor.

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Testimony Accompanying Auditor's Report.

Filed March 16, 1910.

In the Supreme Court of the District of Columbia.

Equity. No. 20037.

MAGRUDER vs. DRURY.

Tuesday, February 9th, 1909-2.00 p. m.

Hearing pursuant to notice.

Present: Mr. Nathaniel Wilson; Mr. Maddox for himself and Mr. Drury as trustees and also—

Mr. Drury being duly sworn testified as follows:

I submit herewith the Sixth Annual account of Mr. Maddox and myself as trustees. This account shows the bonds and stock and other personal property with some exception to be hereafter noted, in the hands of the trustee, the promissory notes secured by mortgage now in the hands of the trustee such notes as have been paid since the last accounting and other notes purchased. The account also shows the interest collected on these promissory notes since the last accounting the dividends on the stock and the rents collected, all in the aggregate. It also shows payments made by the trustee on account of taxes, water rents, repairs and insurance, also amount paid to Alexander R. Magruder, amount paid to Isabell Magruder, amount paid to A. F. Magruder as guardian.

The account also shows the transactions since our last account in respect to the Eliza C. Magruder trust. We also submit a list of assets showing the property of every kind in the hands of the trustees with the exception of the household furniture, stock and implements on the farm in Frederick County, Maryland, and the securities in the Eliza C. Magruder trust. The account is as of date January 17, 1909.

Adjourned.

### MAGRUDER vs.

DRURY.

Friday, April 16, 1909-11.00 a. m.

Hearing pursuant to notice.

Present: Mr. Nathaniel Wilson; Mr. Maddox for himself and Mr. Drury, trustees, also Mr. Drury.

Mr. Maddox makes the following statement:

The Trustees received from the executor of Judge Richardson, the sum of \$9,285.03 in cash; also received in promissory notes secured by deeds of trust on District real estate the sum of \$248,569.01, also 34 shares of the capital stock of the Northern R. R. Company at the par value of \$100, also 35 shares of the Bigelow Carpet Company par value \$100, Five shares of the capital stock of the Lowell Mfg. Co. which was subsequently consolidated in some way and the trustees received in exchange the 35 shares of the Bigelow Carpet Co. The trustees also received certain bonds of stock and a certificate of indebtedness of the Florida Coast Line Canal Transportation Co. nominal value, also household furniture and

effects, carriages and harness which were turned over to the beneficiaries for use and over these the trustees assumed no authority.

Of the Personal assets received by the trustees they still have on hand promissory notes aggregating \$138,237.94 as of date Jan. 17, 1909, the shares of the Bigelow Carpet Co. the Northern R. R. Co. and the stock of the Florida Coast line Canal Transportation Co.

Of the notes secured by deed of trust from time to time during the administration of their trust the trustees have paid out \$107,792.40 in the purchase of Arab, in relieving the real estate belonging to the trust of mortgages and incumbrances of the property at the time it passed under the control of the trustees. Most of this property has been under rental, but some has not. The family dwelling built on square 127 lots 12-13 and 14 has been continuously occupied by the family since the trustees took control, so they received nothing by rentals from this property, and of course nothing for looking after the taxes, repairs and other charges. On the 17th of October 1905 we paid off the trust amounting t \$15,000. Interest on this trust to the extent of \$4,500 was paid, and taxes aggregating \$3,528.70 making a total payment out of the personal estate on account of this property \$23,028.70.

Upon this aggregate of personal estate—\$107,792.40 the trustees

think they should be allowed a commission.

They would also have a commission from the aggregate of notes turned over \$138,237.94, also on the shares of stock of the Bigelow Carpet Co. and the Northern R. R. Co. No claim is made at this time on the securities of the Florida Coast Line Canal Transporta-

tion Company because these securities are not of any nominal value, and if the beneficiaries desire they will be turned over to them by the trustees. I have been personally connected

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with the Company for twenty-three years, and although they have passed through many vicissitudes I am reasonably sure if the beneficiaries will hold on to the stock and bonds they will some day realize very handsomely from them. These securities came to the trustees from the late Judge Richardson as part of certain collateral given him for Henry G. Cook for monies due and owing.

The trustees should also be allowed a commission on the sale of lot 51 block 754 for \$3,904.83, also on lots 6-7 and 21 square 550 for \$8,000. Both these sales are noted in the second report of the Auditor and the figures are taken from that report, and on the \$3,400 proceeds of sale of lot 51 square 937, sold on the second of

November 1908.

On the 27th of March 1903 the trustees expended \$1,200 for the purchase of furniture and farming implements at Arriby.

this expenditure no commission is claimed.

I submit herewith memorandum showing notes received by the trustees from the executor, summarized from the first, second, third, fourth and fifth reports of the Auditor and as they appear for the sixth and final accounting, marked Exhibit S. M. #1. I also submit a cash account of the principal of the estate as received from the executor as said account is summarized from the first, second, third, fourth and fifth reports of the Auditor and statement submitted by the trustees for the sixth and final accounting, marked Exhibit S. M. #2.

The trustees understand that the real estate remaining in the trust is to be delivered over to the beneficiaries free from

107 any claim of commission preferred by them.

In looking at the principal cash account I note that the trustees received from the executors and became responsible for \$9,285.03 in cash, and it would be but fair to allow them commission on the expenditure of this amount.

# By Mr. WILSON:

Q. Have you a statement of the commissions which you think ought to be allowed in addition to those heretofore paid? A. I have made up no such statement. I simply have submitted to the Auditor an account of the personal estate which has passed through our hands on which no commission has been allowed.

Q. You do not state what you think should be allowed, the amount of commission or the rate of commission? A. No, I don't state the rate. It will be between 3 and 6% I judge. That is for

the Auditor to decide.

Q. You have stated from the papers in your possession all the items concerning which you think a commission should now be allowed not heretofore allowed in the enumeration which you have given?

A. I think so.

Q. As I understand it, in respect of this account you make the general claim that you are entitled to commission but the amount of commission you are entitled to you do not specify, you leave that to the Auditor? A. I said it ought to be between 3 and 6%. This

has been a very troublesome estate since it has been turned over

by the executors to the trustees. I think about 5%.

Q. Referring to your sixth account which is now before the Auditor on the last page in that account, as I understand it, there is no specific claim for commission? A. No, because it has been customary for the Auditor to allow a rate of commission on income.

Q. I understand that there was a certain amount of cash on

hand at the time you made the account? A. \$6,668.48.

Q. On page 8, rents collected \$6,271.60 and on the same page paid commissions for collection of rent \$442.64. Who were those commissions paid to?

By Mr. Drury: They were paid to Arms & Drury, as I could not undertake to do that personally.

Q. Is the same item of charge in all the accounts? A. I don't know whether it is from the beginning or not. It is in the account of 1907—\$445.03. It is not in the first and second. In the first part of the business he undertook to do that without any charge at all.

Mr. Drury: I have a whole lot of notes which have been charged off and disposed of which I have to turn over.

Q. Those were retained for the purpose of making out of them what you could. Have you a list of them? A. No, I have not.

Q. I think we ought to have a list of them.

Q. Quite a number of these notes were bought by the trustees and I want to know of whom they were bought and who represented the sellers of the notes and I want to know particularly whether those transactions were made by Arms & Drury? A.

Yes, they were.

Q. All the notes purchased were purchased though Arms & Drury?

A. That is right.

Q. And did Arms & Drury get a commission for the negotiation of the notes? A. How do you mean? When they originally made the loans to the people?

Q. Yes? A. Oh. yes, sir.

Q. When ever these notes were purchased by Arms and Drury they got a commission? A. But it was not this money that was used directly to make these loans. Arms & Drury made the loans and then as the money accumulated the trustees purchased these notes. They might have been running a short time or a long time—

Q. The notes were purchased of Arms and Drury by the trustees

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merely as an investment? A. Yes.

Q. When Arms & Drury got the notes in their possession which

they sold to the trustees then they charged the person who made the loan the commission? A. Yes.

Q. What was the usual commission, for instance on the Warden notes? A. It varied. It runs from one to two per 110 cent, usually about 1%.

Q. Many of these notes were renewed from time to time. A. Yes

Q. When they were renewed there was a commission paid? A. On some there was. Those belonging to the estate were not. The people dealt with Arms & Drury-

Q. You mean none of the notes which the trustees owned had a commission charged on for renewals? A. I should say to the best

of my recollection not, but that covers a long period.

Q. These notes that were bought by the trustees and are here in the schedule as being notes that the trustees owned, all of them were the property of Arms & Drury? A. Not all of them, because some of them represent charges, etc.

Q. Can you tell which of them? A. Yes, but only from memory.

## By Mr. MADDOX:

Messrs. Arms & Drury are real estate brokers who negotiate a great many loans on real estate in Washington, frequently what is known as building loans. They advance their own money from time to time until the completion of the building, and when completed they find purchasers for the notes. As one of the trustees in this case from time to time as funds of the estate became sufficient. he purchased these notes at their face and accrued interest and in every single instance we got back the money invested and interest

accrued to the face and tenure of the note.

The trustees are entirely willing that the balances heretofore credited to them as being commissions on rents collected shall be deducted from the commission which the Auditor may find due us on this accounting.

Adjourned subject to notice.

### MAGRUDER VS. DRURY.

June 11, 1909-1.30 p. m.

Hearing pursuant to notice. Present: Mr. Wilson, Mr. Maddox, Mr. Gatley, and Mr. Drury.

Statement by Mr. Maddox as follows:

Several of the notes that came i to the possession of the executors cannot now be turned in for the following reasons

 A Note of A. H. Gillis for \$380. This note was given to me sometime in 1897 or 1898 by Mr. Drury who was then settling up the estate of Judge Richardson as executor. Gillis lived in Boston and I sent the note there for collection to Mr. Herrick, a lawyer. who made two collections of \$25, each and each time kept \$10, for his services, sending me on the 15th of February \$15, and on December 17th, of that same year \$15. He reported that he could not make any further collections and that in his opinion it would not pay to incur the costs of suit. I did not ask him to return the note and he has it now as far as I know.

2. Then there was a note of G. B. Chittenden, endorsed or guaranteed in some way by F. W. Pratt. This also was handed 112 to me for collection by Mr. Drury as executor. After considerable correspondence with Mr. Pratt. I succeeded in collecting two sums on account, one June 10, 1898, of \$50, and one Sept. 14, 1898, of \$50. Then I could make no further collections from Mr. Pratt or Mr. Chittenden and they made no responses whatever to my requests for payment. I thereupon brought the matter to the attention of Mr. H. S. Cummings who in some way appeared to be responsible for the note, and on the 22nd of November, 1898, reported that I could not make further collections from Mr. Pratt or Mr. Chittenden, but that he would have to himself undertake the payment of the note the balance at that time being \$241.83. Cummings did not seem to think he was liable on the note and was very unwilling to take up the payment. We dickered about it some months and finally in the spring of the following year I wanted his testimony in the tax suit at Cambridge, Mass., on the question of domicile to show that Judge Richardson in his lifetime had frequently declared his domicle as being in Washington. On this point the case turned. Mr. Cummings then told me if I would "Swear it off" as to the Chittenden note he would go on and testify without This he did and his testimony was very any charge for his time. potent, and we finally got a judgment in favor of the defendants, the amount involved being about \$15,000. I then turned this note over to Mr. Cummings.

3. Mr. Drury also gave me for collection a note of a man named Philip Inch of \$260. I had a good deal of correspondence with Inch, also with Pratt who seemed to be in some way connected with the matter, but the best I could do with the note was to collect \$50

on account on March 21, 1898. Then or since the note disappeared from my office so it was never paid and as yet I have not been able to trace it. I am quite sure, however, that nothing could have been collected further.

In my ledger account with Mr. Drury as executor of the will of Judge Richardson beginning in March, 1897. I have charged myself with various collections on account of the Gillis, Inch and Pratt-Chittenden notes amounting to \$220. I rendered him an account of this on the 10th of January, 1901, and asked him to pay me the difference, having made outlays amounting to \$9.11 in excess of what I collected. This Mr. Drury sent me under date of Jan. 11, 1901.

In my letter of the 8th of January referring to this matter I did not give Mr. Drury the items going to make up the total of \$229.11. He sent me, therefore, only the \$9.11 due me, but properly the \$229.11 ought to be charged against and as forming part of the \$18,800 which was allowed him by the order of the Court of Massachusetts. Mr. Drury is ready to account for it now.

I file herewith a memo, showing these transactions more in detail

marked S. M. #3.

I also requested Mr. Drury to make up a memo, showing what payments he had made for costs of the suit, traveling expenses of Mr. Cummings and Dr. Magruder to Boston and other items which ought properly be charged against the \$18,800. I submit herewith a statement showing the amount of \$411.50 which is made part of Exhibit S. M. #3.

I also submit a statement of items on which the trustees claim a

commission of 5% marked Exhibit Sm. #4.

I want to state further that when our first account was presented to the Auditor it opened as of date of April 1st, 1899, while I was not appointed trustee until April 24th of that year,

when the account of Mr. Drury and myself could properly When the account was presented by Mr. Drury I did not understand that he had gone back to the first of April and only discovered it since the last hearing in this case before the Auditor. We have therefore fixed the first account to make it start from the time when I was appointed trustee.

## Examination by Mr. Wilson:

Q. There was prepared and filed, I think here with the Auditor, by you, a statement of what the trust estate consisted on the 17th of January. What other papers, notes or securities are in your possesssion as trustees? A. I don't think there are any other papers in our possession except some old notes which have been charged off as desperate from time to time in accountings before the Auditor.

Q. In your first account you charged yourself with promissory notes as per schedule "desperate" \$26,907.96. I will ask how those have been accounted for if they are still in your possession any of those old notes supposed to be worthless? A. We have them all.

Q. Have you a list of them? A. We have the notes themselves;

also a list of them.

Q. Do your accounts show what if any monies have been received in respect of those notes included in your list? A. My accounts do not show that any money has been received on 115 account. Some money was received on one of those notes for which we accounted in our of the reports to the Auditor.

Q. How is that list marked? A. Schedule BB of the first report.

Q. The trustees present a claim of 5% on items enumerated in paper marked S. M. #4-does this charge include or exclude all other charges for commissions except those contained in previous accounts. Is it final? A. This is final as to everything we will As I understand it, the beneficiaries want to leave with turn over. us certain notes for us to try to collect.

Q. This does not include commission on the income? A. No. Q. Is such a charge contained in your account already presented? 1. For the account of income?

Q. Yes? A. Yes, that is included.

Q. Then in addition to the items in this paper there will be included a percentage on \$21,243.33 income? A. Yes. 8-2265A

Q. The first item in the Exhibit 4 which you presented is cash received from the executors \$286.60 and I see that in your first account you charged yourself as having received from the executors \$9,285.03. A. That comes by reason of the lap.

Q. The first account was incorrect? A. Yes, sir, because it

started at the wrong date.

Q. In respect of the second and third items of stock that came in your possession at the time you were appointed trustees, that stock is in the same shape as it was then? A. Yes.

Q. Cash on hand for distribution Jan. 17, 1909—\$6,668 I suppose that is changed? A. Very much. It has been very largely increased by reason of payments of notes.

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#### Mr. Drury testifies as follows:

### By Mr. MADDOX:

Q. At what date did you open an account of the trustees substituted by this Court? A. April 1, 1899.

Q. The account ran along continuously without any change in

its books? A. Yes.

Q. You did not separate the executors' account from the trustees' account? A. No, sir.

Q. The trustees' account should have begun then at the time of their appointment—— A. April 25th.

Q. Have you re-stated it on that basis? A. I have.

Mr. Drury: I present herewith statement showing receipts and disbursements from the 25th of April, 1899, to date of our first account before the Auditor.

Adjourned.

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## MAGRUDER

VS. DRURY.

FRIDAY, July 9, 1909-1.00 o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Nathaniel Wilson for the complainant-; Mr. Maddox for himself and Mr. Drury as trustees, and also Mr. Drury.

## Cross-examination of Samuel A. Drury.

## By Mr. WILSON:

Q. In the paper filed by the trustees yesterday, in respect of the trustees' first account and the item therein in respect of the entry of \$18,800 as of date April 24, 1899, you state that the account of the executors was hastily prepared by you and the property on hand summarized as of the estimated value of \$14,458.37. Will you state if up to that time the business of the estate and all the transactions concerning it had been within your own personal and immediate knowledge and control? A. Yes, sir; it had,

Q. And the books of the executors were in your keeping? A. Yes.

sir.

By Mr. MADDOX:

Q. Exclusively? A. Exclusively, yes.

By Mr. WILSON:

Q. And your books showed all moneys received by the executors

and all moneys paid out? A. Yes, sir,

Q. As part of the paper filed by the trustees is a copy of 118 what appears to be the first and final account of George F Richardson and Samuel A. Drury, executors, which you

remember? A. Yes, sir.

Q. By whom was that account actually prepared? A. I am not so clear about that final account. I had the assistance, at various times, of Mr. Greer, Mr. Smith Thompson, and several other attorneys here; but to place them in their proper position and to tell who assisted in preparing each report is rather difficult.

By Mr. MADDOX:

Q. Was it Mr. Greer or Mr. Weir? A. I rather think it was Mr. Greer who helped me to prepare that final account in Massachusetts; he helped me under Mr. Weir's instructions as to form.

By Mr. WILSON:

Q. The account was actually made up here, then? A. Yes, sir. Q. And from data in your possession as shown by your books? A. Yes, sir. The reason it was prepared hastily was because of the fact that Mr. Weir who was associated with young Mr. Richardson who was taking care of part of the tax title suit in Massachusetts, had an appointment at the Arlington Hotel on a Sunday to prepare the papers, and two days after that, I think on Tuesday, that report was passed by the Massachusetts court. It was made out between that Sunday forenoon when we had the meeting at the Arlington and the time necessary to get it started to Boston or to Lowell to have it passed.

Q. But it was actually made out here? A. Yes, sir. 119

Q. And signed here by yourself and Mr. Maddox as trustees. as it appears? A. Yes, sir.

Q. And you both, as it appears here, joined in the request that

it should be allowed? A. Yes, sir.

Q. Was the form in which it was presented to the Court just the same as you had agreed upon here? A. Yes, because I knew

nothing about any other form.

Q. Who first made mention of the sum of \$18,800 in respect of compensation or fees or commission at that time? A. It would be very difficult for me to say who first mentioned it, because that was a good many years ago; but the amount of the compensation as it was thought would be passed by the Massachusetts court was suggested by Mr. Weir.

Q. What, if any, suggestion, request or expression was made by you in regard to it? A. None whatever.

Q. You say in your statement that you were told or given to understand that out of that amount you must pay counsel fees in the tax cases and counsel fees in Washington: Who told you that? I cannot say who told me that.

Q. State, as nearly as you can recollect, how that sum was arrived A. It is utterly impossible, Mr. Wilson, for me to recall who told me that; I suppose Mr. Weir did, as I think he

was the only one who possessed any knowledge required to make such a suggestion, I understood it as meaning just the fees

that were connected with that tax suit.

Q. Who told you what disposition was to be made of the remainder after paying the fees you have mentioned? A. There was nothing said about that at all, except that it was understood that I had done the work in connection with the estate and Mr. Richardson did not expect to get any compensation; and I think Mr. Weir understood that very well when that amount was mentioned; certainly Mr. Richardson had knowledge of that when that account was passed.

Q. I mean at the interview here, what conversation occurred, and upon what basis was that sum arrived at? A. I cannot say on what basis it was arrived at. I suppose Mr. Weir arrived at that from his knowledge of the Massachusetts law; but it was understood that that was the compensation to come to me, and that out of that I was to pay these expenses in connection with the tax suit in

Massachusetts.

Q. In the account beginning with the heading Expenses of Administration, including care of property, etc., and the amounts of notes collected, payments made, etc., who furnished the partie ulars therein enumerated? A. They were all furnished by me, and make up part of this report.

Q. You yourself made no suggestion, application or request in respect of the amount that should be paid or allowed to you under

that heading? A. None whatever; no, sir.

121 Q. When and how did you actually receive that amount of \$18,800? A. Of course I actually had it in hand.

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Q. At that time, on that Sunday? A. On that Sunday. Q. In what form did you get it into your personal possession?

Mr. Maddox How did what get in his personal possession? Mr. Wilson: The \$18,800 referred to in that statement.

A. They were already in my possession as executor,

Q. On what date was that? A. Do you mean that Sunday? Q. Yes, when that account was made up. A. The date of the account is the 24th of April, 1899.

Q. And the money at that time was in your possession. A. Yes.

sir

Q. How, exactly, did you segregate that amount from the funds of the estate and get it into your personal possession? A. There was no cash kept to pay it, so I took \$13,000 of notes and \$5800 in cash—a check.

Q. What notes were those? A. A Haller & Moore note of \$6,000. a Cameron and Mauro note for \$2,000, and the Theodore W. Bedford note for \$5,000.

Q. And the cash? A. The cash was a check drawn to my order.

Q. On whom? A My own check as executor, payable to 122 myself.

Q. On what bank? A. On the Columbia National Bank. Q. The proceeds of the notes then, were yours when you collected them? A. Yes, sir.

Q. Did you give any receipt for that payment? A. I do not recollect, sir.

Q. What entry on your books appears in respect of the payment by you as executor, and the receipt by you individually of that amount? A. I credited on the cash-book the notes for their face and accrued interest as if the money had been paid into my hands as the executor, and on the other side I charged up the item of \$18,800 as the allowance for fees, etc., in Massachusetts.

Q. When were those entries made? A. On the 24th day of April, 1899.

Q. What was done with the account when it was prepared here and verified by you and the other trustee? A. Now, again, it is only my recollection that Mr. Weir took that on with him. It was very material to get that account passed and get the money out of Massachusetts before we would be called upon to pay the assessment for another year's taxes, and so it was all done as expeditiously as possible.

Q. You did not go on with it? A. No, sir.

123 Q. And you were not in court when the report was presented and acted upon? A. No. sir.

Q. And of what occurred there you have no knowledge? A. No. Q. State particularly and exactly what disposition was made by you of that \$18,800. A. As particularly as it is possible for me to

state at this time I sent a check to Mr. George F. Richardson for \$1,000 which I understand was to be turned over and probably was turned over to Mr. Weir; I gave a check to Mr. Moody for \$1500; and I gave a check to Mr. Maddox for \$1500

Q. Was that check payable to Mr. Richardson? A. Yes, sir. Q. Your own check? A. No, sir; it was not my own check, because instead of keeping a bank account, I kept an account on Arms & Drury's books, and it was Arms & Drury's check.

Q. And it is your best recollection that there was such a check payable to Mr. Richardson? A. Yes, sir,

Q. Do your bank books show it? A. I have not looked it up.

Q. Judge Richardson refused to take any compensation as executor, did he not? A. Yes, sir,

Q. You have no personal knowledge of what became of that check, have you? A. No. I could look up the check and tell

Q. What were the dates of the checks for \$1500 each to Mr Moody and Mr. Maddox? A. The date of the check to Mr Richardson was April 24, 1899; the check to Mr. Moody and the check to Mr. Maddox were both dated on the 1st day of June,

O. What else was there? A. Then there were some smaller items Q. What were they? A. Amounting to a couple of hundred dollars. I cannot tell what they were for. I did not keep a personal cash book, and it was only on account of the size of those large checks that I have been able to get track of those.

Q. You say there were some smaller items amounting to about \$200; what became of the difference between \$4,200 and \$18,800? A. I kept it.

Q. The difference would be \$14,600, and that you kept as your own compensation for services you had rendered up to that time,

whatever they were? A. Yes, sir.

Q. In respect of the determination of that amount and the allowance of that amount by the Court, you only know what you have stated here and what appears from the account itself? A. Yes, sir.

Q. That amount was considered and was held and continued to be held as your own exclusively without any payment being

made from it to anybody else? A. Yes. sir.

Q. It went to your own credit on your own private account and was used as your own absolutely and entirely? Λ. Do you mean

that I made no further disposition of it?

125 Q. I mean it was for yourself to dispose of as your own property? A. I disposed of it as my own property, yes: but there is an understanding in my office that when either Mr. Arms or myself makes any commissions outside that simply goes into the commission account of Arms & Drury.

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Q. Do you mean to say that no part of that amount went to the credit or for the benefit of Arms & Drury directly or indirectly? A I mean to say that all of that balance that remained to me went to

the credit of Arms & Drury.

Q. That is, what you received as compensation as executor went

jointly to the benefit of Arms & Drury? A. Yes, sir.

Q. That was the disposition you made of it as an individual? A. Yes; sir; as I make the same disposition of any commission I make anywhere.

A. Yes, sir; Well. I want to qualify that in this way: I think it was put to a special account until these disbursements had been made,

and then the balance went to the credit of Arms & Drury,
Q. I was only inquiring about the \$14,600. The check to Moody
for \$1500 and the check to Mr. Maddox for \$1500 were the checks

of Arms & Drury? A. Yes, sir.

Q. In this paper to which I have referred as having been filed yesterday there are statements showing the amounts of notes purchased by the trustees: Can you state whether all of the notes purchased by the trustees were purchased of or through Arms & Drury? A. I cannot say all; I could not be clear in

answering that question.

O. Well, in regard to the greater part of them? A. Yes, sir. Q. About what proportion? Just give me an idea. I suppose your books would show that. A. I should say ninety per cent of them.

Q. With your last and sixth account there is a schedule of \$26,996

of notes purchased: Were those notes all purchased of Arms & Drury? A. No. sir.

Q. What were? A. The Aguiler note, the Lowery note, the Wardman notes

Q. The two Wardmans? A. Yes, sir.

Q. And the others? A. The Lee-Brown note for \$2,000, as also the installment note, was taken as purchase money on account of a

house belonging to the estate.

Q. And these notes were part of the purchase money? A. Yes, The Draper note was taken on account of a property which we foreclosed. We formerly held Catherine West's note on 443 Fourth Street, Northeast, and default was made in payment of the note. and it was foreclosed; this \$2,000 note was taken as part payment for that.

### By Mr. MADDOX:

Q. You mean taken as eash?  $\Lambda$ . Yes, as a condition of the sale, so as to create a sale. The Stein notes were taken 127 in an adjustment of accrued interest on some of the Groff notes and were secured on the same property on which the interest had accrued; the Stein notes represented accumulated Groff interest.

#### By Mr. WILSON:

Q. These Wardman notes belonged to Arms & Drury, did they? A. Yes, sir.

Q. How long had they had them? A. I could not answer that. Q. Can you state approximately? A. I could not. We made

builders' loans there for Wardman.

Q. I refer to these particular notes amounting to \$16,000. A. These particular notes were only part of a large builders' loan that we made on a row of houses; they were sold to this estate as the estate accumulated money. I could not give you dates without referring to the books.

Q. Can you state approximately, in respect to these particular notes, how long you had had them? A. I really could not from

memory.

Q. Can you state approximately what these particular notes cost Arms & Drury? You say they owned them. A. These notes cost Arms & Drury their face, less a certain commission.

Q. What was that commission? A. I cannot recollect that

Q. Approximately. A. Probably 1½ per cent.

Q. Were they the subject of and did they enter into a contract that existed between Arms & Drury and the Wardmans? A. Was there a written contract?

Q. Yes. A. No, sir.

Q. There was a verbal contract? A. Yes, sir.

Q But in respect of these particular notes for \$16,000 what was the verbal contract? A. This money we guaranteed to advance as he required it in the course of his building, which probably covered a period of something near three months. I imagine, that being about the usual time it takes to complete buildings of that class.

Q. What was Wardman to pay for the loan? A. I cannot recollect.

Q. As nearly as you can? A. Probably about 1½ per cent.

= Q. On what? A. On the face of the loan, whatever that was; I do not remember what it amounted to.

Q. Was it for \$16,000, or was it part of a larger transaction? A. I think it was a good deal more than that; I don't know how much.

Q. What if any additional allowance was made to him in the way of a bonus or payment or commission by Arms & Drury? A. Made to whom?

129 Q. Wardman. A. Nothing at all.

Mr. Maddox: What do you mean by that, Mr. Wilson?
Mr. Wilson: I mean whether or not Wardman every paid anything more than 1½ per cent for this arrangement by which he

was to have money when he needed it.

The Witness: Not at all, although I am not sure about that com-

mission being 1½ per cent.

Q. What is your best recollection? A. That is my best recollection, but we had so many transactions varying from one per cent to

two per cent that I could not recollect this particular one.

Q. Then in respect of this \$16,000 Arms & Drury did receive 1½ per cent and whatever interest was due up to the time the notes were sold? A. When they sold those notes they got the accumulated interest.

Q. When did they get the 1½ per cent? A. That is supposed to be in the general account with Wardman, and you charge it up when you make the entries on the book; but what particular part that comes out of it is impossible for me to say—whether it comes out of the first part or the last part; it is simply a charge in that account.

Q. How many notes of Wardman, approximately, were sold by Arms & Drury to the trustees? A. That will be difficult to say.

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Q. Approximately. A. It is almost impossible to state approximately because if we made a loan for \$3,000 we might make

three notes of \$1,000 each, or two notes of \$1,000 each and two \$500 notes, so that a loan of \$3,000 might be sold to four or five different people and those people who purchased them we would not know at the time we made the loans would be the purchasers.

Q. Then Arms & Drury had these notes on which they had a right to charge 1½ per cent to Wardman, and they (Arms & Drury) sold

those notes to Drury and Maddox, trustees? A. Yes, sir.

Q. Can you give any approximate idea of how many notes were sold by Arms & Drury to Drury & Maddox, trustees, on which Arms & Drury got a commission or charge or payment of from 1½ per cent to any other percentage? A. I could not. I could go through these papers and find out.

Q. Were the results and practice the same in regard to the ninety per cent of notes that the trustees bought? Λ. What do you mean

by the practice?

Q. In respect of the purchase of Arms & Drury of notes on which

they got their 11/2 to 2 per cent? A. They were not necessarily all builders' loans; but it was the practice of Arms & Drury, and still is their practice, to take any good loan that is offered to them and which they think is a first-class loan, not knowing at the time of the purchase or make the loan where it will be disposed of; we simply make a loan and wait for clients to come in with the money and take it off our hands.

Q. Have you any statement or account of the profit made by Arms & Drury in respect of or out of the notes that Arms &

Drury sold to the trustees? A. I have not, sir.

Mr. Maddox objected to further cross-examination along this line, and Mr. Wilson withdrew the question for the moment.

Q. What are the relations between Arms and Drury in their business? Is it a corporation, or is it a partnership? A. It is a partnership.

Q. What are the respective interests of the partners? A. Equal. Q. Whatever profit is made by Arms & Drury, one-half of it is

yours? A. Yes, sir.

Q. Will you state what in this account first was paid to Arms & Drury for services in respect of any matters of business connected with the estate? A. The only moneys that Arms & Drury got from the estate were the commissions for the collection of rents, as they appear in each account, and that was done because it involved a good deal of trouble; I have never put the estate to any expense whatever for clerk-hire or anything of that kind, and I was advised by counsel that it would be permissible to collect that commission.

Q. There is a charge in your account of commissions for collection of rents \$442.64; that was paid to the firm for the work of

making collections of rents? A. Yes, sir,

Q. As a member of the firm of Arms & Drury you were

132 entitled to one-half of that? A. Yes, sir.

Q. In respect of the cost of insurance, \$263.66, by whom was that insurance effected? To whom were the fees paid? A. I should say most of it went through the office of Arms & Drury, out of which they got a commission of 15 per cent, possibly as high as 25 per cent on some of it; there was other insurance they got nothing on.

Q. And so they got a commission on all the insurace charges effected by Arms & Drury? A. Not all of it, but propably most

Q. Have you any idea what the amount was? A. The commission would average from 15 to 25 per cent. Excuse me a minute-I would like to say, in connection with that insurance, that I don't think it would have made any difference whether it was insured through Arms & Drury or others; it would not have cost the estate any more

Q. The cost of repairs is put down here at \$1640.70. How were they charged up and how were they paid? A. The work was done at the lowest possible cost and paid for in full, with no commissions.

Q. Was that done through Arms & Drury? A. Yes, sir,

Q. Arms & Drury ordered it? A. I did; it is all the same.

Q. Were the bills rendered to the firm? A. Yes, sir.

Q. In respect of this last account, for instance, what if any charges of any kind or for any purpose were made against the estate by Arms & Drury? A. None, other than those that have been stated.

Q. The last item in your account is for "new cash-book, \$3;" was that purchased by Arms & Drury, or by the trus-Who would pay the bill? A. I think it was paid by the

check of the trustees.

Q. Things like that were entirely distinct from the matters of Arms & Drury? A. Yes. The only business done through Arms & Drury was business that would have to be done through someone other than the trustees.

Q. In respect of the commissions heretofore charged and allowed to the trustees, were they in like manner divided or shared by you

with Mr. Arms? A. Yes, sir.

Q. One half of your half went to Mr. Ames? A. Yes, sir.

Q. So that, so far as the compensation and emoluments of the business were concerned, he was really as much rewarded as you were? A. Yes, sir.

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Q. Perhaps you can give me approximately the total amount of the notes sold by Arms & Drury for the estate? A. I do not believe I can do it even approximately. I could foot up the items.

Q. If you cannot do it you can say so. A. I do not believe I can. Mr. Wilson.

Q. I understood you to say that 90 per cent of all that had been purchased were purchased by Arms & Drury: That is correct, is it A. Yes, but that is merely a guess.

Mr. Wilson: I will say now that in determining what compensation is justly payable to Mr. Drury as one of the trustees, it is proper and necessary to take into consideration what profit he has derived, as a member of the firm of Arms & Drury, from the sale of those notes, and I will ask him to state, as nearly as possible, what the profit was, and if he cannot do so now, to prepare himself to do that later.

The Witness: I should say that the profit from the sale of those notes was nothing; the profit from the purchase of those notes was

something.

Q. What was the profit from the purchase? A. As I say, that

would be very, very difficult to determine.

Q. Your books will show, will they not? A. Yes, they will show. but it will require an immense amount of work to arrive at it, to go over every note that has been purchased and the history of it.

Mr. Maddox: Now, Mr. Auditor, I think we are right back to that line of investigation that was touched upon by Mr. Wilson a few moments ago, whether it is necessary to go into these loans which Arms & Drury made in financing certain building operations. It does not seem to me to be pertinent here to go into the books of Arms & Drury on that matter.

### By the AUDITOR:

Q. I understand that these transactions were confined to building loans? A. No, sir. Arms & Drury always make loans regardless of the sale of the notes.

Q. You mean that they never invested the money they had on hand in this trust. I understood you to say at some of our hearings that they did. A. No. Arms & Drury always make loans

135 that appear good to them with their own funds.

Q. Always out of their own funds? A. Yes, sir.

Q. And not out of the funds of their clients? A. Altogther regardless of their selling the notes. When we make a loan we never know where we are going to place that loan.

The Auditor: The proposition is that one trustee has received compensation in connection with making these investments, and that that should be taken into the account.

Mr. Wilson: That is all.

The Auditor: Whether it turns out to be true or not is another matter.

Mr. Wilson: As a general proposition, a man cannot be buyer and seller at the same time.

Mr. Maddox: Arms & Drury make loans with their own money, not the money of their clients.

The Auditor: We are nearly through with the testimony on that point, and we might as well finish it.

#### By Mr. Wilson:

Q. I will ask you this: In respect of the notes appearing in account 6 as having been purchased by the trustees of Arms & Drury, what profit did you, as a member of the firm of Arms & Drury, realize, or what money did you receive from the sale or transfer of said notes to the estate, directly or indirectly? That means what, if any, commissions or allowances, bonus or discount, that was paid did you get, as a member of the firm of Arms & Drury, from those

notes? A. I can only answer that in a general way. cannot answer that particularly because I do not know the exact conditions of that particular transaction. But I should say that there was probably a commission of 11/2 per cent, out of

which I would naturally be entitled to one-half.

Q. Then, in respect of these notes of \$16,000, your share would

be \$240? A. \$120, and that is only approximate.

Q. Will you please examine and be prepared to state definitely what the transaction was in respect of the other notes, and what, if any profit, you realized?

(Objected to by Mr. Maddox, the competency of this line of examination to be determined by the Auditor hereafter.)

### A. Yes.

Adjourned to 10:30 o'clock A. M. of Monday, July 12, 1909.

#### MAGRUDER V DRURY.

Monday, July 12, 1909.

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Met pursuant to adjournment.

Present: Mr. Nathaniel Wilson for the complainant; and Mr. Samuel Maddox and Mr. J. J. Darlington for the defendant.

Cross-examination of Samuel A. Drury (resumed).

#### By Mr. WILSON:

Q. The last inquiry related to the notes that appear in your 6th account as having been purchased of Mr. Wardman, and you were to be prepared at this hearing to state what that transaction was as to

the acquisition and sale of those notes. A. I want to correct the statement that, to the best of my recollection, the com-

137 mission there was 1½ per cent. Looking at the entry, I find it was \$410, which is 2 per cent on the total amount of \$20,500, of which \$16,000 was afterwards disposed of out of the trust estate. In that schedule the Aguiler note and the Lowery notes also came from Arms & Drury.

Q. Was there any percentage of profit on those? A. The Aguiler loan was \$6500, of which the estate acquired \$1500, and on that

\$6500 note Arms & Drury got a commission of \$100.

Q. Not \$100 on the \$1500, but on the \$6500? A. On the whole \$6500. On the Lowery note of \$2500 Arms & Drury got one per

cent commission.

Q. In the schedule of items in respect of which additional compensation or commissions are claimed, there is, as the first item of notes on hand, \$138,237.94. That includes the Aguiler note, does A. It includes two of the Aguiler notes of \$500 each, but one of those has since been paid. When this was made out it included the two \$500 Aguiler notes.

Q. Perhaps you do not understand me. I asked you whether or not in the memorandum of \$138,237.94 the notes purchased are

included. A. Yes sir.

Q. What were those notes given for? A. Those notes were given for money loaned to make improvements.

Q. In that same memorandum relative to commissions the 7th item is in respect of lot 51 square 937. That is, as I under-

138 stand, purchase money? A. Yes sir.

Q. And there is a suggestion—I will not say a claim—of a commission of \$3400 on that. Had the Aguiler note anything to do with the purchase for sale of that lot? A. Nothing whatever.

Q. That transaction was merely the purchase of a note?

Q. In the list of notes purchased is the note of Lee Brown for \$2,000? A. That is part of the deferred payments on account of that sale of lot 51 in square 937.

Q. Who made out the 6th account? A. I made it out.

Q. The Lee Brown note for \$2,000 is, as I understand, like the

other notes, included in the notes on hand? A. Yes sir.

Q. In the memorandum as to commissions, on the face it appears, does it not, that you are claiming or suggesting a change of commissions or compensation for the Lee Brown note as being a part of the notes on hand, and you are also claiming compensation in respect of the sale of the lot in respect of which that note was given?

Mr. Darlington: We concede that that was an inadvertence, and that we are not entitled to a commission both ways.

Mr. Wilson: State what your attitude is in regard to that.
Mr. Darlington: We agree that the Lee Brown note, for 139 \$2,000, having been inadvertently included, should be stricken out.

Q. In respect of the note of William A. Draper for \$2,000, in the list of notes purchased-included in the notes on hand I supposewhat was the origin of that note? A. As I explained the other day, the property No. 443 4th street, northeast, came into the hands of the executors; it was later disposed of, I think by the trustees, and as part of that sale I think the \$2500 Catherine West note was taken as part payment; under the foreclosure on account of that note the trustees accepted this \$2,000 note as part payment for that.

Q. You claim, then, a commission or compensation in respect of that sale, which was the full amount of the sale, and also \$2,000 as one of the notes that were given in respect of that sale; is not that so? A. I should say that is in the same class with the Lee Brown

note.

Mr. Wilson: That should come out then.

Mr. Maddox: I want to state on the record that I made out that memorandum of items on which the trustees ask a commission. I simply took the totals, \$138,237.94. If there are any notes which represent deferred payments of purchase money for real estate purchased by the trustees, they should of course be stricken out. We will look it over and take them all out.

Q. Was there a deed of trust on that lot? A. At what time? Q. At the time it was sold or just previous thereto. A. 140 Yes sir. The Catherine West note was secured on that. Q. Was that paid her? A. I think it was \$2500.

Q. By whom? A. It came out of the proceeds of the foreclosure

sale of the property at auction

A. It did not belong to the estate? A. Yes, the property belonged to the estate and it was sold. In selling that, the trustees took this Catherine West note; default was made, and it was sold under that deed of trust, and as part of the purchase money under that sale this \$2,000 was taken. That was the only way I could get a sale, and I took that as part payment for it. Of course the Catherine West note was paid off out of the proceeds of that sale.

Q. The calculation as to commissions is made on the whole amount

of the sale, is it not?  $\Lambda$ . That I cannot answer, because Mr. Maddox made up the statement.

Q. From that sale what was actually realized to the estate? A. It was all realized except this \$2,000 note, which was amply secured.

Q. Do you mean that the estate, independently of any existing or previous deeds of trust, realized from the property \$3,904.83? A.

Yes sir; the estate realized every cent that came out of that 141 sale, which Mr. Maddox has put down at \$3904.03.

Q. It realized that amount exactly just as though it had been the property of the estate and not charged with any incumbrance whatever; that the estate realized \$3904.83 net. A. I could not say that, because I do not remember that transaction. Do you mean did I take a note as part payment?

Q. No; I mean to say whether, out of the proceeds of the sale, any incumbrance held by anybody else was paid. A. I cannot tell

that. If it was, it was probably paid long before that sale.

Q. Now please state whether that lot was absolutely the property of the trustees, or came to be their property, and whether this sum was realized from the sale, or whether there was first deducted from it whatever incumbrance there was, and if so, what was the incumbrance? A. My recollection is that any prior incumbrance existing was paid sometime prior to the trustees' sale.

Q. Paid by whom? A. Paid by the trustees. And that is indi-

cated by the amount of purchase money there.

Q. So in order to make it a good title the trustees paid off the incumbrance, whatever it was?

Mr. Darlington: I object to that question.

Q. Well, what did they do in regard to any existing incumbrance? I will put the question in that form. A. To the best of my recollection the course of procedure in the case was like it was in any other case; that when the first trust came due and the trustees

thought there was anything in the property, they paid off that trust and in that way became the actual owners of all the property.

Q. So when the property was sold, to reimburse them there was first put back the money they had paid out; is that so?

Mr. Darlington: I object to that as argumentative.

Q. All I want to know is whether or not there was advanced by the trustees the sum of money—and if so, how much—in order to get the sum of \$3904.83 on account of which the trustees are now claiming a commission. A. To the best of my recollection the incumbrance on that property was \$2,000.

Q. In respect of the item relating to the sale of lots 6, 7 and 21 in square 550, the amount of sale being stated at \$8,000, will you state whether any notes were given which are included in the notes on hand? A. No sir, none at all. If any were given they were

paid.

Q. What incumbrances were there on those lots, and what did

the trustees realize as a net sum from the sale? A. It would be very

difficult for me to say from recollection.

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Q. Will you look and see what the net amount realized was and whether or not the sum of \$7240 was not deducted from the purchase money before anything went to the trustees? A. The executor paid off the trust of \$6500 there and then acquired that property under foreclosure proceedings.

Q. What else did they pay out of the estate? A. They then charged up the notes they held against the property. 143 amounting to \$950, and of course there had been charged

up against the property items of taxes and repairs in handling it; and then in 1902 the property was sold for \$8000.

# By Mr. DARLINGTON:

Q. Can you tell us when the executors paid—I mean approximately when? A. I cannot give the date, except that it was prior to the time of the foreclosure in November in 1898

#### By Mr. WILSON

Q. Then the estate actually realized the difference between the \$8,000 and the sums you have mentioned? A. Including any ex-

penditures for accumulated taxes, interest and repairs,

Q. So it is in respect of that \$8,000, the total purchase money. that you make the suggestion of commission. What, if any, fees commissions or profits did the firm of Arms & Drury realize from these transactions other than that which you have already spoken of, in respect to the Wardman notes and the other two? A. Nothing There were no commissions ever paid to any one in our office for any sales of real estate sold by the trust, nor were any trustees' fees ever charged where Mr. Arms and myself, or either of us, were trustees; in fact we rarely paid any trustees' commissions even when outsiders were trustees; we would give them \$5 or \$10 for their trouble and that would be all.

Q. In the paper that was filed on the 8th instant there is a summary of the notes purchased, amounting altogether, as I

figure it, with the notes included in the 6th account, to \$202,409 as the total of the notes purchased by Arms & Drury: is that correct? A. No, that is not correct as to the notes purchased by Arms & Drury. That is the total amount of notes as purchased by the trustee.

Q. I understood you to say the other day that about 90 per cent of these were purchased by Arms & Drury. A. I will have to correct that, because I do not think it was much over 65 or 70 per cent at

the outside

O. In respect of what were purchased by Arms & Drury, the profit made by them you stated was about 112 per cent. A. It would

Q. What was the average? A. To give you a very liberal answer I will say 2 per cent. In many cases we got less than that, but I could not begin to tell you in how many cases without looking at every one of them, for instance, in the case of the Lowery note we only got one per cent; in the Aguiller note, which I looked at, we got about 1½ per cent; and in the case of the Wardman notes we

get 2 per cent. The limit would be 2 per cent.

Q. In the second item in the memorandum in relation to additional commissions is the aggregate personal estate transferred into real, \$107,792.40; will you explain how the transfers were made and exactly what that item is composed of? A. Those items are composed of the

posed of the amounts paid out to relieve the property of any prior encumbrance to the one held by the estate, or in some cases to pay off like the encumbrance on the home; I paid

out \$15,000 for that.

Q. Have you any statement of the items that make up that amount of \$107,792.40? A. Not here. I think it was made up from the

Auditor's reports.

Q. Does it include the sums belonging to the estate that were used in respect of the encumbrances that were on the property described in this same schedule—for instance in respect of lots 6, 7 and 21 in square 550? A. I am pretty sure those amounts do include those

Q. And so in respect of the other sales mentioned, lot 51, square 937? A. To the best of my recollection they do, but I am not sure

about it.

- Q. So this contains a charge or suggestion of charge in respect of the moneys that were used to pay off encumbrances, and also a charge for the whole amount of the purchase money after the cucumbrances were discharged? A. It is very difficult for me to answer these questions about a schedule that was prepared by Mr. Maddox.
- Q. Can you without much trouble prepare a schedule showing what that sum is made up of?

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# Note.-Mr. Maddox handed Mr. Wilson a paper.

Q. In the same schedule there are items 3 and 4 of the shares of stock of the Bigelow Company and of the Northern Railroad Company; in what shape were those shares and in whose names did they stand when they first came into the possession of the trustees? A

In the name of William A. Richardson. Q. In both companies? A. Yes.

Q. In whose name do the certificates now stand? A The same name. The Lowell Manufacturing Company by consolidation with some other corporations was converted into the Bigelow Carpet Company, and that is the only change that has been made in the stock.

Q. And the certificates have been continuously in your possession since you received them, and you have collected the dividends? Λ.

les sir.

Q. Who was in charge of Judge Richardson's personal property at the time of his death? Λ. He had just turned it over to me. He realized that he was going to die teld me so, and turned these notes all over to me.

Q. Do you mean to you personally, or to Arms & Drury? A. To

me personally.

Q. Who had conducted his business in regard to these things up to the time of his death? A. For the three years previous to that I had done everything for him. For years prior to that he had done business through Mr. Arms, and he introduced Mr. Arms to this second trust business, and together they did it for years; they were doing it when I went in with Mr. Arms.

Q. How do you mean—that they were doing it together? was the Judge's practice to come down to the office every afternoon,

and Mr. Arms kept a book especially for Judge Richardson in which all collections were entered and at the end of the week there would be certain notes turned over to Judge Richardson to balance that account.

Q. With whom was the transaction in respect of the actual acquisition of the notes and the arrangement made with the seller or maker of the notes? A. With Mr. Arms; he was acting as Judge Richardson's agent all the time.

Mr. Darlington: I submit that this is entirely immaterial and irrelevant.

Q. In whose possession were the notes and personal property relating to the business that Mr. Richardson had with Mr. Arms or Arms & Drury at the time of Judge Richardson's death? Were they in yours?

Note.—The question was objected to by Mr. Darlington as irrelevant, and the auditor sustained the objection on the ground that the matter inquired of does not come within the reference.

Q. In your 6th account I think—if not there, in one of the other accounts—there is a charge of some \$800 for commissions on securities that were transferred from the desperate to the separate Do you know what I mean? A. Yes. It is what Mr. Maddox is pleased to call a bookkeeping entry, which on the face of it did not appeal to the auditor, and on which he allowed a commission, but which we declined to take: it amounted to \$849.98

Q. It is conceded that that was never paid. A. Never paid.

Q. And should not be allowed? A. No sir. That was in the same class as the second trust notes for which we make no charge for commissions.

Anything else belong in that class? A. I do not know of

mything else.

Q. In this memorandum of moneys taken from the personal estate and put into real estate, the real estate that was actually purchased as I understand, was the farm Araby and two other pieces; is that so? A. By "actually purchased" do you mean where we did not hold any encumbrance and forcelosed?

Q. Yes. A There was but one piece, and that was Araby. trust estate acquired no real estate except what it had to acquire in

order to protect itself

Q. As it is, you do not make any claim? A. None whatever excepting Araby

Q. In respect of the first item of the credits in your first account 10 - 2265 A

I would like to understand exactly your position as a trustee concerning that item, which I understand you to say is incorrect. A. Yes sir.

Q. And that the facts were that you, from the moneys or assets in your hands, had received the \$18,800 and made the disposition

of it that you have stated. A. Yes.

Q. And that the difference between what you paid out and the \$18,800 you retained as compensation for your services as execu tor from the time of your appointment until the appointment of the trustees; is that correct? A. Yes sir.

149 Q. And that in respect of making any charge for your services or in respect of indicating what you considered your services were worth you had nothing whatever to do? A. Nothing at all; never made a suggestion even.

Q. You recommended, of course, the allowance as it appears here?  $\Lambda$ . Yes sir,

Q. What, if anything, had your co-trustee to do with determining the amount to be allowed? A. That I do not know, unless he made some suggestion to Mr. Weir.

Q. I mean to your knowledge. A. I have no knowledge.

Q. At the time that compensation was arranged for you had been appointed and were a trustee? A. Yes, I think a few days before we had been appointed trustees by the court here.

Q. And as trustee you advised this allowance; is that so?

Mr. Darlington: I object; the papers will speak for themselves.

Q. Do you remember advising or recommending this allowance?

Mr. Darlington: I still object, as immaterial Note.—The Auditor sustained the objection.

Q. You can give no further explanation than you have already given in respect of how that amount of compensation was determined upon, and for what, and the circumstances attending it? A 150 No sir, I cannot. I have stated it as fully as I recollect.

Redirect examination.

### By Mr. DARLINGTON

Q. You say with respect to this memorandum of moneys taken from personal estate and put into real estate still in the trust, that it was prepared not by you but by Mr. Maddox? A. Yes sir.

Q. Are you able to state whether or not any sums are included in this memorandum which were used to pay encumbrances on property, which property has been sold? A. No sir.

Q. Can you prepare and furnish us a statement showing just what profit to you has resulted from any insurance premiums on property of the estate placed by Arms & Drury? A. I can, ves sir

Q. You state that the profit on notes purchased for the estate by Arms & Drury would be, liberally stated, about 2 per cent; who paid that profit? . A. The borrower in each case

O. And he said it for what? A. Paid it to Arms & Drury, as

brokers, for loaning the money.

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Q. Before or at the time of the sale of these notes to the estate? A. Before.

Q. What profit, if any, was realized by Arms & Drury or by yourself from the sale of these notes to the estate? A. None 151 at all.

# Samuel Maddox was recalled and testified further as follows:

### By Mr. Darlington:

Q. Attention has been called to a recommendation made by the trustees, together with the other parties in interest, that the Massachusetts executors' account should be allowed; do you wish to make any statement about your connection with that recommendation? A. I remember signing the recommendation. My coexecutor was Mr. George F. Richardson, the brother of Judge Richardson. Mr. Weir came down to Washington to help Mr. Richardson in preparing the executors' final account which was necessary to be completed in a very great hurry. I had nothing whatever to do with the items; those were prepared by Mr. Weir. With regard to the \$18,800 it was explained that it was to be an allowance to the executors for their work and to pay the costs attending the tax suit at Cambridge. I understood at the time that the balance remaining after paying those costs and the expenses was to be a commission for the executors, and I signed the recommendation,

Q. By whom was that explanation made to you? A. By Mr. Weir. I knew nothing of the course of procedure in Massachusetts courts, and did not undertake to interfere or make suggestions.

Q. Does it appear why there was this great hurry to get the account filed? A. Yes. We were in a very great hurry to get the personal estate out of the jurisdiction of the Massachusetts court because on the 1st of May following another tax year would begin, and we were exceeding anxious, under the advice of Mr. Moody, to close the executors' account in Massachusetts before the 1st of May.

Cross-examination.

### By Mr. WILSON

Q. When did you first make inquiry of Mr. Weir? A. In Lowell, I should say in Februray, 1899—it may have been March. I went on there to see Mr. Richardson about the defense of the tax suits, and Mr. Weir was in his office, and also young Mr. George F. Richardson, a lawyer.

Q. When was that? A. I say in February or March as I remember.

Q. That was before you were appointed trustee? A. That was

before I was appointed trustee.

Q. You were appointed trustee on the 1st of April. A. On the lst of April, 1899; qualified on the 4th and receipted for the assets of the estate on the 24th or 25th.

Q. And this recommendation or application was made on the 25th of April? A. About that time.

Q. What personal knowledge have you of the making up of that account? A. Practically none.

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Q. By whom was it actually made? A. I do not know,

Q. When and from whom did you first hear mention of the \$18,000 as commission? A. I do not remember that, Mr. Wilson.

Q. As nearly as you can. A. I cannot remember. Q. You do not know when? A. I do not know.

Q. Upon what representation did you, as trustee, recommend the approval of that account? A. Upon the representations of Mr. Weir. I did not attempt in any way to interfere with the management of this account in Cambridge or make any suggestions with regard to it.

Q. What was represented to you as the reason for fixing that account? A. I say I don't know anything about it; I didn't have any-

thing to do with it.

Q. How, as trustee, could you recommend the payment or allowance of it without knowing what is was based on? A. For that 4 trusted to Mr. Richardson. I thought he would do what was right up there and that he knew about what compensation was allowed executors in Massachusetts.

Q. You did not know? A. No, I did not know.

Q. You did not observe that there was a provision in the Massachusetts law that no commissions should be allowed? A. I did not know that at the time. In my opinion the executors were fairly entitled to that compensation.

Q. What is the basis of that opinion? A. The character of the

estate.

Q. Did you think that and did you say so at the time?

A. I did not say so at any time until now.

Q. The services extended over about two and one-half

years? A. Yes.

Q. For which the executors received that amount of compensation—was that understood? A. The amount of their compensation was based more on the character of the estate than upon the time during which they were occupied in the work. There was a great mass of notes, I think as many as three thousand, secured by second trust and unsecured.

Q. When you went to Massachusetts and prior to your appointment as trustee what were your relations to the business? A. I simply was counsel for the Magruder children to defend them against those tax suits brought against the executors in Cambridge. I had

nothing whatever to do with representing the executors

Q. You did not represent Mr. Drury? A. No, I did not I filed this bill in behalf of the Magruder children to enjoin Mr. Drury from paying the taxes for which suit had been brought in Massachusetts.

Q. Who represented Mr. Drury in that suit? A. Mr. Drury was not represented, further than he agreed with me that the children ought not to be required to pay the taxes amounting to some \$15,000.

Q. There was no adversary proceeding, then, as between the com-

plainant and defendant? A. To this extent there was: that Mr. George F. Richardson would not consent to join in the de-

fense of the suit in Massachusetts; he said the money ought to be paid; and when I filed a bill here making him and Mr. Drury defendants, seeking an injunction, Mr. Richardson would not submit to the jurisdiction of the court; I therefore amended the bill and made Mr. Drury sole defendant, and got a temporary restraining order; and it was not till then that I ever got any sympathy from Mr. George F. Richardson for my attempted defense of these suits. Mr. Richardson said the money would have to be paid.

Q. Was the other executor opposed to the suit? A. He was opposed to the suit here. He was opposed to my injunction suit, yes,

Q. I think it has already appeared that he refused to take any commissions. A. Yes. He would have had to pay \$15,000 but for this suit here; and my recollection is that before he would consent to a final accounting in Massachusetts and turning over the assets of the estate to Mr. Drury, he required us to give a bond against a possible judgment in the tax suits, saving him harmless, and as I remember I went on that bond.

Q. Did you have any interviews with Mr. Richardson? A. Oh, several. He insisted that the suits would go against me; and so did

Mr. Moody, by the way, at first,

Mr. Wilson: A list of notes has been referred to once or twice, some of which notes were held to be not good, and some of which the trustees say they refused to receive from the executors. Those notes amount to \$30,000 or \$40,000 and they are still as I understand in the possession of the trustees. I think those notes should

be produced with a list of them, so that we may have some knowledge of whether they are good or bad, and those in the possession of the trustees ought to be handed over to be dis-

posed of.

The Witness: These notes were all accounted for in previous auditor's reports, and on Saturday last I tendered a batch of them to Mr. White, Mr. Wilson's assistant.

Q. Any list of them. A. They are listed in the Auditor's reports.

I can have a list made, though it is about a two days' job.

Mr. Wilson: I think they should be accounted for in this audit. The WITNESS: I think they have all been accounted for in previous audits.

The Auditor: I think this subject was discussed once certainly, if not twice, during this reference, and it was suggested that the trustees were not responsible for those notes; then I suggested that Mr. Drury was responsible for them as executor. As between the trustees and the sole executor some one is responsible for those notes; and it was then said that there would be a list prepared.

Mr. Wilson: I insist, as a matter of justice and propriety, that there should be produced to the auditor by the executor and by the trustees, for final disposition, these notes they have but which they say are of no account

The WITNESS: I will have the list made up.

The following notes ought not to be included in the aggregate of \$138,237.94:

Lee Brown		٠			۰	٠			٥					e									 			\$2,000
W. A. Draper					*	×		è		è		*		*					*	8.			 			2.000
C. H. Herr			. ,		,						8	*											 			140
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MAGRUDER

V. DRURY.

Tuesday, July 13, 1909.

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Met pursuant to adjournment.

Present: Mr. White, representing Mr. Wilson, for the complainant-; Mr. Maddox and Mr. Darlington for the defendant-.

Further testimony of Samuel A. Drury.

By Mr. Darlington:

Q. Will you tell us this morning what was your share of insurance premiums on policies issued on the property of the estate by or through Arms & Drury? A. I figured it up very carefully, and find it to be \$97.52.

Q. That is your share of the insurance commissions? A. Yes

sir.

Mr. Maddox filed an amended copy of exhibit S. M. No. 4 filed at the former hearing of June 11, showing the personal estate passing through the hands of the trustees and accounted for.

Mr. Maddox: From time to time in the accounting before the Auditor fees were allowed me as counsel. I submit a memoranda for reference, showing what those fees were, and when and why they

were allowed.

In the first report there was an amount of \$350 which was for work done before I became trustee, and in the report filed February 21, 1906, there was an allowance of \$200 for quieting title to certain real estate belonging to the trust.

158 (Note.—Said memorandum is marked Exhibit S. M. No 5.)

Equity. No. 20037.

MAGRUDER VS. DRURY.

Wednesday, October 20, 1909-10.00 a. m.

Present: Mr. Maddox.

Mr. Maddox makes the following statement.

At the hearing on July 12th, 1909, near the close, Mr. Wilson referred to the fact that he had many times tried to get from the trustees the notes which were charged off as "worthless" in their first accounting before the Auditor. At the time I was just about to start out on my summer vacation, and actually left the City on the 14th.

On my return in September Mr. Drury and I hunted up all of the notes so charged off as "worthless" made a list of them and held them subject to Mr. Wilson's order. One day his assistant, Mr. White came to my office and I then tendered him the notes done up in envelopes, separately, and requested him to look them over, compare them carefully with the memorandums given him here in our accounting before the Auditor, sign a receipt for them, and take them away. He then stated that he did not have time to do this, but might do so some days later. After waiting probably a week or ten days I wrote Mr. Wilson a letter calling his direct personal

attention to the fact that these notes were ready to be delivered to him, and I was very anxious to get rid of them 159 He paid no attention to my letter, at least he did not send

anyone down to get the notes.

One day last week I met him on the street in front of the Court House, and insisted that he at least go to my office and look at these notes. This he did but he declined to take them away or receipt for them.

The notes are very much in our way, occupying valuable space in our safe in our building, and I am very ancious to get rid of them. Acting on this idea I wrote Mr Wilson on Monday that I would bring them to the Auditor's office at 10:00 today to be delivered to The notes are here now

First. Notes mentioned in Schedule bb as being notes and claims in the inventory which were not accepted by the trustees, aggregating \$21.876.82 All of the notes mentioned in this list are here except a little note in which there is a balance due of \$150 This note as reduced was given to Mr. H S Cummings, as explained

Second. Schedule Bb—desperate notes charged off in the first account of the Auditor, aggregating \$26,907.96, these notes are all here excepting a little note of one H. G. Gilbert for \$190.00. This note was given to me by Mr. Drury for collection before I qualified as trustee. I gave the matter careful examination and requested payment of Mr. Gilbert. He seemed unable to make payment and examination disclosed there would seem to be many unsatisfied

judgments on the dockets of the Supreme Court of the District of Columbia. I therefore advised Mr. Drury that no good purpose would be obtained by undertaking the cost necessary to se160 cure judgment.

Third. A lot of notes, some of which were charged against properties subsequently conveyed to the executors and trustees;

and others taken in the hope of bettering the estate.

All were finally abandoned.

We mean by this that where property on which the estate had a second trust was foreclosed and bought in by the trustee the notes remaining unpaid were charged off as being of no value. The makers of these notes in no instance were men of any personal responsibility.

Adjourned.

#### MAGRUDER vs. Drury.

Wednesday, February 9, 1910-2.00 p. m.

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Hearing pursuant to notice.

Present: Mr. Maddox and Mr. Wilson.

Mr. Maddox: In the memorandum for the sixth account of the trustees, of date of January 17, 1909, there are set out in detail the articles of personal property and furniture, certificates of stock, promissory notes, and certain real estate constituting the entire estate in the hands of the trustees.

On the 10th day of July 1909 I delivered to Mr. Wilson for these beneficiaries, deeds conveying all of the real estate shown on the memorandum, and all of the household furniture, of which Alex ander Magruder and his sister took possession, and all of the promissory notes shown on that memorandum except nine, also

excepting some cash. Mr. Maddox here offered the original receipt in evidence. Copy marked Exhibit S. M. #6. In the Supplemental account of the trustees filed with the Auditor September 27, 1909, the trustees charge themselves with having received in eash the full amount of the notes reserved when the rest were turned over to Mr. Wilson, and show the balance of cash then in their hands and now in their hands to be \$15.526.41. I submit a memo, showing notes not included in the receipt of Mr. Wilson but since paid as shown in the supplemental account. Exhibit S. M. No. 7.

At a hearing before the Auditor on the 12th of July Mr. Wilson insisted that the trustees bring to the Auditor's office for disposition certain notes which were charged off as worthless,—first a list aggregating \$21,816.83 which the trustees declined to receive from the executor,—second, a list of notes aggregating \$26,907.92 which were charged off in the Auditor's first report as being worthless.

Mr. Drury and myself as trustees ceeded in digging up all of these old notes from a great mass

we had pertaining to the estate. When I had them all in order I requested Mr. Wilson's assistant, Mr. White, who happened in my office to take them away. He declined to do this. Some days afterwards I met Mr. Wilson in front of my office and asked him to please come in, get these notes and take them away. This he declined to do. Subsequently I gave him notice that I would produce the notes before the Auditor as he had requested that I do, and brought them here on the day appointed. Mr. Wilson did not appear.

162 I then took them back to my office and I think wrote him a letter asking that he come and get them, but he did not come. Then sometime in October I myself took these notes to Mr. Wilson's office and left them there, together with a memorandum or list of every note that the trustees had charged off during their performance of the trustee undertaken by them. Since that time I have had from Mr. Wilson no word of any kind with regard to his having received the notes. A few days ago when I was in his office looking for another paper, Mr. White told me, pointing to a bunch of notes on Mr. Wilson's private office desk, "there are those old notes." I

inquired if he had gone over them and he said, "No."

For a great many years I have been the intimate personal friend of Dr. A. F. Magruder, the father of Alexandre R. Magruder. He lived from the time of Judge Richardson's death until the spring of last year at 1739 M Street. While there I frequently went to his house, constantly saw Alexandre while he was a small boy and occasionally helped him a little with his Latin lessons. I do not quite recall what year it was he went to Harvard, but it was probably Then I would only see him in the summer months. I think at the Easter Recess of Harvard of 1906 Alexandre came here and visited his father for a couple of weeks. I then called his attention to the provision of his grand-father's will which nominated him as "co-executor" with the other executors. The will provided that this nomination was made because "Alexandre has a special interest in some trust estates in my hands which he can look to when he becomes older, and because I am anxious that Alexandre should 163

also learn a knowledge of business and acquire good business ideas and habits, and I join him as one of the co-executors because I felt that it will afford him an opportunity of doing

On the 18th of April 1906 at his request, I filed a petition for him in this cause, reciting the provisions of his grand-father's will and stating that in June of the current year he would finish his course of studies at Harvard and that he would "thereafter be in a position to take an active part in the further care, preservation and administration of his grand-father's estate". An order appointing him trustee was passed by the Equity Court on the date of the petition Alexandre was graduated in June or July 1906 from Harvard, but instead of coming to Washington to live he went into some sort of business in New York, and I do not think he visited Washington more than two or three times a year. Subsequently and during 1907 he married, continued for a while in business in New York, and then as I understand it, went to Lowell to live, rarely coming

to Washington. In the fall of 1908 he and his wife came to Washington to live, but remained here only a month or two and then

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No

returned to Lowell or somewhere else.

During all the time that Alexandre was nominally a trustee he did absolutely nothing as such. I tried to interest him in matters pertaining to the estate, but never could and even suggested to him that after leaving Harvard he had better come here and familiarize himself with the management of real estate and real estate loans of which the property mainly consisted, but he either declined or neglected to do so, and rever that I know of did be in

neglected to do so, and never that I know of did he do anything in the nature of work as a trustee or work for the estate.

### By Mr. WILSON:

Q. Your feelings towards Alexandre and his feelings towards you are not now friendly? A. I don't know. No. I should not say that

they were. I have nothing at all against him.

Q. How long have your feelings been unfriendly? A. They are not exactly unfriendly so much as they were probably strained. and it was because I insisted that he ought to make a deed conveying to his father a life estate in the Frederick farm known as When Mr. Magruder, the father, was ill at one time and likely to die, Judge Richardson persuaded him, Dr. Magruder, to convey certain property which he had by inheritance to him, Judge Richardson, to hold in trust to pay the income and rents of the real estate to Dr. Magruder's sister for her life and on her death to give the property to Dr. Magruder's two children. Dr. Magruder got well and found that by this deed in trust which he was persuaded to execute by Judge Richardson he had entirely cut himself out of his own inheritance. I therefore suggested to Alexandre that the least he could do was to give Dr. Magruder a life estate in the property at Araby which did not cost as much as Dr. Magruder's interest in the property conveyed in trust was worth. Alexandre's hesitation and final refusal to do this is what occasioned the strained relations between us. I do not care to have any further friendly relations with a son like that.

Q. When was that, approximately? A. I should say that was in 1907 or maybe 1906. It was before he left Harvard? I saw him once in Boston and probably while he was still at Harvard.

Q. You thought he was not a final son and did not care to recognize the relations of his father, and he thought you were meddling with a matter that did not concern you? A. I suppose so.

Q. And he thought and said you were much more concerned with his father's estate than you were in his interest? A. If he did not

say it .- it was certainly a fact.

Q. Did you ever ask him to do any specific thing as trustee which he refused to do? A. Not any specific thing. I asked him to come and help in the matter.

Q. Considering your relations, his acting as trustee would have been disagreeable. A. I could have treated him and dealt with him in a matter of business. He never offered to do anything.—

never asked if there was anything he could do, but persistently remained away from town, to engage in other business, as I understand.

Q. Alexandre was appointed a trustee with you in the Magruder trust? A. I have just looked over the order appointing and it does not say anything about that. I should say he was not trustee of the Magruder estate.

By Mr. Maddox: Mr. Wilson, has such disposition been made of these notes as meets with your approval?

A. They are held by me subject to the order of the parties owning them, namely, the heirs and beneficiaries so far as

I know, there has been no suggestion and never has been any suggestion that the trustees have not acted and looked after them

and done the best they could in regard to any of these notes.

Mr. Maddox: In a petition filed in this cause on the 16th day of
June 1909 by Alexandre Magruder and his sister, he says, "This
petitioner, Alexandre R. Magruder, has had as trustee, no active
participation in the management thereof, nor in the execution of
the aforesaid trust."

Adjourned.

Magruder vs. Drury.

FEBRUARY 16, 1910.

Mr. Maddox and Mr. Wilson, and Mr. Drury. Mr. Drury in behalf of the trustees submitted to the Auditor his original books of account.

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Inventory.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

#### Probate Court.

[SEAL.] To Watson J. Newton, Elkanah W. Waters, and James W. Greer, Greeting:

You are hereby appointed to appraise, on eath, the estate and effects of William A. Richardson, late of Cambridge, in said county of Middlesex, deceased, testate, which may be in said Commonwealth When you have performed that service, you will deliver this order, with your doings in pursuance thereof, to George F. Richardson and Samuel A. Drury, the executors of the last will and testament of said deceased, that they may return the same to the Probate Court for said county of Middlesex.

Witness my hand and seal of said court this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and

ninety-six.

S. H. FOLSOM, Register of Probate Court. DISTRICT OF COLUMBIA, 88:

February 16, A. D. 1897.

Then the above-named appraisers personally appeared and made oath that they would faithfully and impartially discharge the trust imposed in them by the foregoing order.

Before me-

[NOTARIAL SEAL.]

EMMA M. GILLETT, Notary Public.

Pursuant to the foregoing order to us directed, we have appraised said estate as follows, to wit:

Amount of personal estate as per schedule exhibited... \$328,124.57 Amount of real estate as per schedule exhibited..... 39,800.00

> WATSON J. NEWTON, ELKANAH N. WATERS, JAMES W. GREER,

Appraisers.

February 23d, A. D. 1897.

Then personally appeared Samuel  $\Lambda$ . Drury, one of the executors of the will of said deceased, and made oath that the foregoing is a true and perfect inventory of all the estate of said deceased that has come to his possession or knowledge.

Before me-

NOTARIAL SEAL.

EMMA M. GILLETT, Notary Public.

# Schedule of Personal Estate in Detail.

Cash in bank United States draft Household furniture and effects shown in	\$8,711.18 232.34
annexed Schedule A	3.710.00
Carriages, &c.: 1 landau, \$500; 1 victoria, \$150; 1 horse, \$75; harness, robes, &c	
\$100	825.00
169 Notes secured on real estate in Washington, D. C., as per an-	
nexed Schedule B	216,755.05
Notes payable monthly secured by second deed of trust on real estate in Washing-	
ton, D. C., as per annexed Schedule C	76,961.00
Notes partially secured on real estate or collateral of less than face value, as per	
annexed Schedule F	9,750.00
Note of John S. Boutwelle on demand, interest paid to Nov. 3, 1896.	000.00
1000.0, 1000	900.00

Notes of Harrison Cooke and Wm. Fletcher, \$1,000 each, payable in 3 and 4 years, respectively, from Nov. 3/93, secured by mortgage in Dakota, at 6%. Note of D. W. Gregory, due Feb. 18/97. 34 shares of Northern R. R. Stock. 5 shares of Lowell Mfg. Co. 350 shares of Universal Car Coupler Co. Value unknown.  Unused portion of burial lot, Oak Hill Cemetery.  Notes doubtful in the opinion of the appraisers and on which no value can be placed is shown in annexed Schedule D.  Notes considered as of no value by the appraisers are shown in annexed Schedule E.	2,000.00 155.00 5,270.00 2,625.00 230.00 5,995.00 32,619.78	\$328,124.57
Schedule of Real Estate in	n Detail.	
House numbered 814 12th St. N. E., being lot 119, Sq. 981 House numbered 443 4th St. N. E., being lot 37, Sq. 812 170 House numbered 1121 15th St. N. W., being parts of lots 10 and 12, Sq. 214. House numbered 441 Franklin House N. E. corner 18th and H Sts. N. W., being lot —, Sq. —, value \$35,000 less an incumbrance of \$15,000. Lot 71, Sq. 887. Property in Manchester Road, in the City	\$3,000 2,750 8,000 800 20,000 1,500	
of St. Louis, Mo., inquiry develops to be worth \$50 per front foot, with the improvements of \$2.000, total value Interest in 10 acres of land at Colorado	3,500 250	\$39,800.00

171 Petition and Decree to Pay Over Funds, &c.

Filed with Auditor March 16, 1910.

To the Honorable the Judge of the Probate Court in and for the County of Middlesex:

Respectfully represent George F. Richardson, of Lowell, in our County of Middlesex, and Samuel A. Drury, of Washington, in the District of Columbia, that on the 28th, day of October 1896 a certain instrument purporting to be the last will and testament of William

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A. Richardson, was duly proved, approved, and allowed by said Court: that your petitioners, the executors named in said will were duly appointed, and accepted said trust and gave bond according to law and gave due notice of their appointment as such executors; that there was not at the time of the granting of letters testamentary to your petitioners and has not been since granting said letters and property belonging to the estate of said testator in this Commonwealth; that since the granting of letters testamentary Isabel Magruder, the only surviving child and heir at law of the said testator has deceased, and that under and by the terms and provisions of said will it is provided that upon her decease the property of the testator should be held by the executors of said will for the benefit of the two minor children surviving the said daughter, namely, Alexander Richardson Magruder, of the age of sixteen years, and Isabel Richardson Magruder, of the age of about thirteen years, children of the said Isabel Magruder: that the only living parties, to wit

the said Alexander R. Magruder and Isabel R. Magruder, who are interested as beneficiaries in the trusts created by the said will, at the time of the probate of said will and ever since, have resided out of this Commonwealth, to wit: at Washington, in the District of Columbia; that Samuel Maddox and Samuel A. Drury, both of said Washington, have been appointed by the proper Court in said Washington, to wit: the Supreme Court of District of Columbia, trustees for said minors to carry out the provisions of said will made in behalf of said minors; that Alexander F. Magruder has been appointed by said Supreme Court of the District of Columbia guardian of said minors, and has duly accepted said trust.

And said executors further represent that said William A. Richardson, at the time of his decease, was not a resident of Massachusetts, but was a resident of said Washington, and that all the parties in interest under the trust under said will at the time of the probate of said will, lived out of the Commonwealth, to wit; at said Washington, and that all the parties now in interest under the trusts under said will now reside, and have since the probate of said will resided out of said Commonwealth, to wit; at said Washington, and that said will should not have been probated in said Probate Court, but should have been probated at said Washington, the last place of residence of said deceased.

Wherefore your petitioners, without waiving their rights as to to the jurisdiction of this Court to probate said will, but insisting that the same was probated in this Court by accident and mistake

173 and should have been probated at said Washington, pray that they be authorized to pay over said trust funds to said trustees appointed in said Supreme Court of the District of Columbia as aforesaid, and that upon such payment they may be discharged from further responsibility by decree of this Court.

GEORGE F. RICHARDSON, SAMUEL A. DRURY, Executors Will of William A. Richardson. I. Alexander F. Magruder, of Washington, in the District of Columbia, duly appointed by the Supreme Court of the District of Columbia, guardian of the above named Alexander Richardson Magruder and Isabel Richardson Magruder, minors and grand-children as aforesaid of the said William A. Richardson, hereby signify my consent as such guardian to the granting of the above petition and respectfully request that authority be given the said executors under the will of the said William A. Richardson to pay over the trust funds in their hands to the trustees appointed by the Supreme Court of the District of Columbia.

A. F. MAGRUDER.

Washington, D. C., April 4, 1899.

A true copy. Attest:

W. E. ROGERS, Register.

174 Decree Authorizing Executors to Pay Over Trust Funds, &c.

Filed with Auditor March 16, 1910.

COMMONWEALTH OF MASSACHUSETTS, Middlesex, 28;

At a Probate Court Holden at Cambridge, in and for said County of Middlesex, on the eleventh day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

On the petition of George F. Richardson and Samuel A. Drury, Executors of the last will of William A. Richardson, praying that they, the said George F. Richardson and Samuel A. Drury. Executors as aforesaid, be authorized to pay over all the trust funds held in trust by them, the said George F. Richardson and Samuel A. Drury. Executors as aforesaid, to Samuel Maddox and Samuel A. Drury, both of Washington in the District of Columbia, duly appointed by the Supreme Court of the District of Columbia Trustees under the will of the said William A. Richardson.

It appearing that all living parties who are interested in the said trust created by the will of the said William A. Richardson reside out of the Commonwealth, to wit, in Washington in the District of Columbia, and it further appearing by a decree of the said Supreme Court of the District of Columbia, dated the first day of April, A. D. 1899, a copy whereof is filed with said petition that Samuel Maddox and Samuel A. Drury were duly appointed trustees to perform

the trusts created in and by the will of the said William A.
Richardson, and it further appearing that the only living cestui- que trust are Alexander R. Magruder and Isabel R. Magruder, minors, and residents of said Washington in the District of Columbia, and that Alexander F. Magruder, of said Washington, guardian of the said minors, by virtue of an appointment made by the said Supreme Court of the District of Columbia, dated the

thirtieth day of April, A. D. 1895, has signified his consent as such guardian to the granting of the petition aforesaid; and it further appearing to the satisfaction of the Court that the laws of the District of Columbia secure the due performance of said trust, and it being deemed just and expedient so to do:

It is hereby decreed that the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, be and hereby are authorized and directed to pay over the said trust funds to the said Samuel

Maddox and Samuel A. Drury, Trustees as aforesaid.

CHAS. J. McINTIRE, Judge of Probate Court.

A true copy. Attest:

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W. E. ROGERS. Register.

Trustees Account-Massachusetts Court.

(Filed April 25, 1899.)

(Rule IX. "No executor or administrator shall receive any compensation by way of a commission upon the estate by him administered, but shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the court in each case may deem just and reasonable. The account shall contain an itemized statement of the expense incurred, and shall be accompanied by a statement of the nature of the services rendered and of such other matters as may be necessary to enable the court to determine what compensation is reasonable.")

The first and final account of George F. Richardson and Samuel A. Drury, executors of the last will and testament of William A. Richardson, alleged in the petition for the probate of will and appointment of executors to have been late of Cambridge, in the county of Middlesex, deceased.

This account is for the period beginning with the 24th day of November, A. D. 1896, and ending with the 24th day of April A. D. 1899.

> GEORGE F. RICHARDSON. SAMUEL A. DRURY,

Executors.

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Amo Va Net o The undersigned, being all persons interested (Isabel R. Magruder, the daughter of the said William A. Richardson, having died in April, 1898), having examined the foregoing account, request that the same may be allowed without further notice.

ALEXANDER R. MAGRUDER, ISABEL R. MAGRUDER, ALEXANDER F. MAGRUDER SAMUEL MADDOX, Trustee, SAMUEL A. DRURY, Trustee.

Commonwealth of Massachusetts, Middlesex, 88:

At a Probate Court held at Cambridge, in said County, on the Twenty-fifth Day of April, A. D. 1899.

The foregoing account having been presented for allowance, and verified by the oath of the accountant, and all persons interested having consented thereto in writing, and no objection being made thereto, and the same having been examined and considered by the court:

It is decreed that said account be allowed.

CHAS. J. McINTIRE, Judge of Probate Court.

#### SCHEDULE A.

Amount of personal property, according to inventory, or balance of next prior account.  Amounts received from income, gain on sale of personal property over appraised value, and from other property as follows:	\$328,124.57
Amount of overdraft collected from Ida C. Magruder.	576.72
Discount on notes	1.200.25
Interest on notes	37,593,77
invidends on stocks	1.005.00
Receipts from real estate	7.218.95
Imount collected a c H. D. Cooke matters	1,000.00
Amount of personal property inventoried as of "No	5,995.00
Value"	32,619.78
Value' Net credit to Ida C. Magruder Trust Estate	124.32
	\$415.458.97

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### SCHEDULE B.

Showing Payments, Charges, Losses, and Distributions.

Cost attending probate of will	\$311.75
Funeral expenses of Judge Richardson	325.50
Bills contracted by Judge Richardson	440.02
Medical attendance for Judge Richardson	70.00
Funeral expenses of Isabel R. Magruder	327.00
Amount paid Isabel R. Magruder	17,400.00
Amount paid to A. F. Magruder, guardian	8,200.00
Maintenance of children, tuition, etc	303.21
Attorneys' fees	121.00
Printing and distributing "Life of Wm. A. Richard-	
son"	1,222.45
Insurance on furniture	24.00
Expended on real estate in repairs, taxes, prior mort-	
gages, etc.	49,705.31
Amount paid for various trust estates held by Judge	
Richardson	16,731.64
Net amount paid out on H. D. Cooke matters	318.57
Protest fees	19.30
Postage	95.00
Stationery	11.91
Expense of administration, including care of prop-	11.01
erty, the payment of debts, the making of final	
account, the collection of notes amounting to	
egge co.7.5.1 the investment in tend and	
\$226,607.54. the investment in trust notes of	
\$166,958.21, the collection from interest and other sources of \$58.168.94, the nayment	
The state of the s	
of about \$50,000 for repairs on real estate,	
the taking up of prior mortgages, taxes, etc., in-	
cluding also the payments of moneys to Isabel	
Magruder and to Alexander F. Magruder, the	
guardian of their minor children, counsel fees in-	
curred in the defense of suits for taxes in Massa-	
chusetts and for counsel fees in Washington, etc	18,800.00
The following money and property have been paid,	
delivered and transferred to Samuel Maddox and Sam-	
delivered and transferred to Samuel Maddox and Sam-	
uel A. Drury, trustees, appointed by the Supreme	
Court of the District of Columbia:	
Cash	7,332.31
· Household furniture	2,710.00
Carriages, &c.	725.00
Stocks	7,895.00
Unused portion of burial lot	230.00
Claim against the United States	1.000.00
Claim against Desmond Alley property	300.00
Notes secured and unsecured.	
rectited and disecuted	279,839.40
To the state of th	

We, Samuel Maddox and Samuel A. Drury, trustees under the will of William A. Richardson, by appointment of the Supreme Court of the District of Columbia, hereby acknowledge that as trustees we have received the property set forth in the last eight items of the foregoing account.

SAMUEL MADDOX. SAMUEL A. DRURY.

A true copy.

Attest:

W. E. ROGERS, Register.

MIDDLESEX, 88:

APRIL 24, A. D. 1899.

Then appeared the within named George F. Richardson and made oath that the within account is just and true.

Before me—

GEORGE R. RICHARDSON,

Justice of the Peace.

APRIL 24, A. D. 1899.

DISTRICT OF COLUMBIA, 88.

Then appeared the within named Samuel A. Drury and made oath that the within account is just and true.

Before me-

[NOTARIAL SEAL.]

ALFRED B. DENT, Notary Public.

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Sixth Account of Trustees.

Filed Before Auditor.

To and Including January 17, 1909.

#### Dr.

of Auditor as follows:	
Household furniture and effects	\$1,500.00
pany	5,270.00
99 Shares of Slock of Bigelow Carnet Company	2.625.00
Furniture, stock and implements of farm	138,642.00
"Araby" Cash	1,200.00
	1,389.81
to proceeds safe 421 bill St. / E.	3,400.00
To 16 judgment vs. U. S.	500.00
To amount added from income	974.61

Balance of principal personal e-tate as follo	ms.	
Household furniture and effects.	\$1.500.00	
34 shares of stock of Northern		
Railroad Company	5.270.00	
Carpet Company	2.625.00	
Promissory notes on hand Furniture, stock and implements	138,237.94	
on farm "Araby"	1.200.00	
Cash	6,668.48	
	-3	\$155,501.42
183 Principal Cash Accord	unt.	
To Balance in hand per last report		\$1,389.81
" Principal of notes collected		27,400.06
" Proceeds sale 421 9th St., N. E		3,400.00
" ½ of judgment vs. U. S		500,00
		\$32,689.87
" Balance from income account		974.61
		\$33,664.48
Cr.		
By purchase of notes		. 26,996.00
Cash on hand	********	\$6,668.48
184 Note Account.		
Notes in hand per last report of Auditor		2190 010 00
Notes paid as per schedule		\$138,642.00 27,400.06
para to per serious.		27,400.00
		\$111,241.94
Notes purchased as per schedule		26,996.94
	_	\$138,237.94
Balance notes in hand as follows:		\$1.00,201.84
Aguila, Y., 2 of \$500		44 non no
Brewer, M. B.	* * * * * * * * *	\$1,000.00
Brown, Lee		500.00 $2,000.00$
Brown, Lee, Bal.	* * * * * * * * *	1.373.94
Crowdy, W. S.	*******	500.00
Dangerfield, W. B.	****	
Draper, W. A	******	3,000.00
Engler, Mary R.	******	2,000.00
Groff, D. B., 4 of \$2,500		1,000,00
1 of \$2,000	******	2.000.00
Bal. instalments		2,000.00
1 note		5,440.00
		0,440.00

A B C G G H K K M X P P P R R S S W W

SAMUEL A. DRURY ET AL.	93
Herr, C. H.	140.00
Holman, B. W.	2,500.00
Hubbard, V. A	1,750.00
Ning. C. W., Jr., 4 of \$1,000	4,000.00
King, C. W., Jr., 4 of \$500	2,000.00
King, C. W., 2 of \$15,000	30,000.00
Lowery, Geo. C., 2 of \$1,000, 1 of \$500	2.500.00
McLeran, John E.	3,500.00
Mazzie, F. A. & E.	4.000.00
Morrisey, Emma, 17 of \$10	\$170.00
Newton, Geo. P., Bal	750.00
raimer, W. J., 3 of \$2,000	6.000.00
raimer, W. J., 3 of \$500	1,500.00
rayne, John C., Bal	1,900.00
nichold, Leopold	4,000.00
Richord, Leopord	5,000.00
Kodinson, Jesse, 12 of \$500	6,000.00
Stell, Robl., 43 of \$28	1.204.00
Thompson, Emma J. Wardman, Harry, 3 notes of \$500.	10.00
Wardman, Harry, 3 notes of \$500	1.500.00
\$1,000	7.000.00
3 " " \$2,000	6,000.00
12 " " \$1.000	12,000.00
2 " " \$2,000	4.000.00
	3138,237.94
Notes Paid.	
Aguila, Y	500.00
Diowii, Lee	26.06
Strong, Hill. D	1,000.00
Tion, D. account instalment	900.00
Uron, D. B., Bal, of 8700	700.00
minian, D. W., account of note	500.00
King, C. W., Jr	1.000.00
	500.00
Morrisey, Emma, 15 of \$10	150.00
	1.500.00
ranner, w. J., 4 or 82,000	8,000 00
1 ammer. W. J., 4 (1 Salut)	2,000.00
rayne, Julii C. account note	100.00
rayne, John C., 1 of \$24	168.00
rayne, John C	14.00
alchardson, R. C., Balance	3,500.00
Milliant Tesso	500.00
autilions 5 5 18 of \$25	450.00
Meth, Robert, 11 of 828	392.00
	3,000 00
West, Catharine	2,500.00

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#### Notes Purchased.

Aguila, Y., 3 of \$500	\$1,500.00
Brown, Lee, November 2, 1913	2,000.00
Brown, Lee, Instalment	1,400.00
Draper, W. A., August 6, 1911	2,000.00
Lowery, George C., February 26, 1910, 2 of \$1,000,	2.500.00
1 of \$500, 2 of \$500	-,
Stein, Robert, 57 of \$28	12.000.00
Wardman, Harry, 12 of \$1,000	
Wardman, Harry, 2 or \$2,000	-,
•	\$26,996.00

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## Report of Real Estate Included in the Trust.

Lot 26, square 71, No. 1112 N. H. Avenue.

Lot 139, Square 235, No. 1306 "W" St., N. W. Lots 12, 13 and 14, Square 127, No. 1739 "H" Street.

Lot "D", Square 211, 1424 R. I. Ave., N. W.

Lot 22, Square 304, No. 2009 12th St., N. W. Lot 23, Square 304, 2011 12th St., N. W.

Lot 146, Square 235, No. 2132 13th St., N. W.

Lot 48, Square 240, 1332 "R" St., N. W

Lot 28, Block 13, Le Droit Park, No. 322 Spruce St.

Lot 187, Mt. Pleasant, No. 3042 14th St., N. W. Lot 20, Square 72, No. 2112 M Street, N. W.

Lot 33, Square 388, No. 917 Desmond Alley. Lot 119, Square 981, No. 814 12th St., N. E. Lot 14, Square 966, No. 1007 Mass. Ave., N. E. Lot 15, Square 28, Cor. 25th and "K" Sts., N. W. (unimproved). Lots 1, 6, 7, 8, 9, 16, 17 and 19 to 24, Block 6, "Edgewood" (un-

improved).
"Araby", near Frederick.

Lot 140, Square 235, No. 1308 W St., N. W.

Lot 50, Square 937, No. 419 9th St., N. E.

Property from which this Estate Receives Rentals or holds trust:

Lot 104, Square 623, No. 47 Defrees Street,

Lots 1 to 7, Block 10, "Isherwood" (unimproved).

### 189

# Account of Income.

#### Dr.

To	interest collected on promissory n	iotes \$14.193.33
	dividends on stocks	777.00
	rents collected	6,271.80
4.6	rebate Ins. 421 9th St., N. E	1.10

\$21,243.23

By

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C. D.

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\$2,276.33

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Cr.		
paid water rents.  cost of repairs.  paid commissions of collection of rents.  paid Alex. R. Magruder.  paid Isabel R. Magruder.  7,	959.94 $204.73$ $640.70$ $263.66$ $442.64$ $400.00$ $116.66$ $233.34$ $3.00$ $3.95$ $20.2$	38.62
Balance of income	\$9	74.61
190 Account of Trustees of the Eliza C. Magr	uder Trust.	
Principal.		
Dr.		
To balance of cash in hand per last report " amount paid on Ellen Curtin note		00.00 $00.00$
C-	\$4	00.00
Cr. Amount loaned income	1	91.17
		01.11
Balance principal in hand	\$2	08.83
$Notes\ in\ Hand.$		
Ellen Curtin, Balance C. C. Dawson D. B. Groff Harry Wardman	$ \begin{array}{cccccccccccccccccccccccccccccccccccc$	00,00 $00,00$ $00,00$ $00,00$
	'L A. DRUF 'L MADDOX	
191 Account of Income.		
Dr.		
To balance in hand per last report of Auditor " collection of rents " collections of interest Borrowed from principal	1.5	24.67 $25.49$ $35.00$ $91.17$

Cr.

By	paid	taxes					0		 					\$268.58
* *	cost	of rep	pairs						 					404.25
	paid	water	. Let	It					 					28.50
**	paid	Eliza	C.	Ma	gri	ude	er		 		0			1,575.00

\$2,276.33

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#### AUDITOR'S EXHIBIT #3.

Report of the Trustees and Schedule to Accompany Their Sixth and Final Account Before the Auditor.

#### Filed March 16, 1910.

The will of Judge Richardson was admitted to probate in the probate court of Middlesex county, Massachusetts, on the 24th day of November, 1896, and letters testamentary issued to Samuel A. Drury and George F. Richardson-the latter a brother of the deceased—the executors named in the will. At the time of his death, and for many years prior thereto, Judge Richardson lived in Washington and owned no real estate in Massachusetts. His entire estate, real and personal, with immaterial exceptions, was in the District Mr. George F. Richardson qualified as executor but never took any active participation in the management of the This was intrusted entirely to Mr. Drury who took into his care and custody everything in the way of interest-bearing securities belonging to the estate. The household furniture, silverware, pictures &c., were turned over to Dr. A. F. Magruder, father of the beneficiaries under the will, and allowed to remain in premises No. 1739 H street, the family home.

Mr. Drury opened the books of account on the 1st day of December, 1896. The account was kept with the trust fund, rather than with any particular agent or trustee, and has been so continuously kept by him down to the present time. Changes occurred

kept by him down to the present time. Changes occurred daily—in fact, hourly—in the account, because of the payment of principal and interest of small notes, maturing monthly, secured by second trusts on real estate in which most of Judge Richardson's money was invested.

Mr. G. F. Richardson declined to qualify as trustee under his brother's will and Samuel Maddox was appointed in his place by the Supreme Court of the District of Columbia on the 1st day of April, 1899. On the 13th of April, 1899, an order was passed in the probate court at Cambridge directing the executors. Drury and Richardson, to turn over the funds and property of the estate to Drury and Maddox, trustees.

At that time there were pending in the Court at Cambridge against the executors two suits for personal taxes, aggregating about \$15,000, and for the years 1897 and 1898. The taxes there commenced with the 1st of May of each year, and Mr. Moody, who had charge of the

defence of these suits and feared they would go against the executors, strongly advised that the executors close their final accounts in Massachusetts before the 1st day of May, when the right to tax for another year would attach.

So urgent did this seem that Mr. F. N. Weir, a lawyer of Lowell and an associate of Mr. George F. Richardson, wired under date April 21 that he would be in Washington the following Sunday, the 23rd, and asking Mr. Drury to meet him that day at the Arling-

ton Hotel.

Mr. Drury thereupon hastily prepared his account as executor, summarizing the property on hand estimated at \$415,458.37. and showing all moneys paid out on account of the trust. 194 Mr. Weir on that day (Sunday, the 23rd) made the sum-

mary, giving the items for which allowance of \$18,800 was asked. With this Mr. Drury had nothing to do except that he was told or given to understand that out of it he must pay counsel fees in the tax cases and counsel fees in Washington, but not the costs and expenses of those suits. The account as so made up was verified by Mr. Drury and Mr. George F. Richardson and presented by the latter, or Mr. Weir, to the probate court at Cambridge and on the 25th of April it was "decreed that the said account be allowed."

Except as hereinbefore indicated, Mr. Drury had nothing whatever to do with the allowance of \$18,800, nor did he suggest that amount

for presentation to the court.

At that time the suits had been filed and Mr. Drury did not know what fees would be charged by Mr. Moody or his Washington counsel. But he was told that after the payment of those fees, whatever was left of the \$18,800 would be an allowance to the executors

for services in connection with the estate.

The tax suits were tried in June following and, much to Mr. Moody's surprise, resulted in a verdict for the defendant, thus saving to the beneficiaries of the will the amount, namely, about \$15, 000. The cases were appealed and the judgment affirmed. Mr. Moody had been paid a modest retainer of \$100 and he charged a

fee of \$1,500 for taking the case through all the courts. A like sum was paid Mr. Maddox who prepared the cases for

presentation in court.

Mr. George F. Richardson having done no work as executor declined to take any part of the allowance, but out of the \$18,800 Mr. Drury paid Mr. Weir \$1,000 for coming to Washington in the interest of Mr. G. F. Richardson to superintend the preparation of the account and for taking general charge of the case in the probate

court at Cambridge.

When informed by Mr. Weir of the amount of the allowance, it was entered up by Mr. Drury as a credit on the cash book under date April 24, 1899. Properly with that entry the account of the executors should have been closed on Mr. Drury's books, but as the change of agents to handle the funds made not the slightest change in their ultimate disposition, Mr. Drury continued his cash account with the fund, crediting it as theretofore with all moneys received and charging against it all moneys expended.

For some months after their appointment the trustees devoted their attention to putting the trust estate in shape for presentation to our equity court, and in October, 1899, an order was passed referring the cause to the Auditor to state of what the estate consisted and the account of the trustees. Mr. Smith Thompson, Jr., then the principal account clerk in the office of our register of wills, was employed to prepare the schedules. The books were turned over to him and he spent some months over them. As he found the cash account continuous, he assumed that because the trustees were appointed on the 1st day of April their accounts should

When he noticed the entry of \$18,800 as of date April 24, 1899, on Mr. Drury's cash items as "Expense a/c, S. A. Drury, allowance, lawyers' fees &c., \$18,800," he inserted the item in his schedule as follows, "Commissions allowed the executors under the will of said William A. Richardson by the probate court of the county of Middlesex, state of Massachusetts, and paid by these trustees because there was not sufficient cash on hand, April 1, 1899,

to do so."

This memorandum, as we have seen, did not correctly interpret the item as prepared by Mr. Weir for presentation to the Massachusetts court. But Mr. Thompson had been accustomed to dealing with commissions in the preparation of accounts of executors in our probate court and probably did not know that executors are not allowed to receive compensation in the way of commissions in the courts of Massachusetts but only an allowance such as the court may deem proper to make in each case. And the trustees at the time were equally ignorant. They had by that time forgotten or overlooked the fact that as trustees they had not received any part of the estate prior to April 24, though it had theretofore been in Mr. Drury's keeping as executor.

But it made not the slightest difference to the beneficiaries at what date the account of the trustees started—the result must have been

just the same on any given date.

As a matter of fact, however, as Mr. Drury's eash book clearly shows, the \$18,800 allowance was taken out before 197 the trustees came into possession of the property and properly their accounts should begin that day. But the only purpose of recasting the account would be to eliminate the items of income and expenditure from the 1st to the 24th day of April, 1899, inclusive Of those items \$15,605 are notes paid and \$120 a note bought This would cause also a change of the cash on hand at the beginning of their account, for, as we have pointed out, the cash was always changing every day, often many times a day, but the final balance of cash and securities on hand must have been identically the same at any subsequent period of accounting. It is, therefore, suggested that the first account of the Auditor be not reopened, as a recasting of the account would show identically the same figures and schedules of notes for the beginning of the second account. But we have stated and herewith submit the trustees' first account as it should have been prepared by Mr. Thompson and presented to the Auditor.

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### SCHEDULE A.

Account of Samuel A. Drury and Samuel Maddox, Trustees.

#### Dr.

To Principal personal estate received from Execute	ors, as follows:
Household furniture and effects appraised at	\$3,710.00 750.00 5,270.00
Co., value unknown. 5 shares of capital stock of the Lowell Manufacturin	
Co	2,625.00
Co. Promissory notes as per Schedule B (good)	. 233,084.01
Promissory notes as per Schedule Bb (desperate) \$26,907.9	6
Promissory notes as per Schedule Bbb (worthless)	9
Cash	7,286.60
	\$252,725.61
Cr.	
By Paid notes secured by deed of trust on real estate	
199 By Allowance to Samuel Maddox for services in suit of ejectment vs. Laura V. Stone et vir \$100, and for services as counsel in this proceeding	
\$250 350.00	)
Auditor's fees and costs for principal 300.00	29,466.57
	\$223,259.04
Balance of principal, April 30, 1900, as follows:	
the state of the s	
Household furniture and effects as origin	
Household furniture and effects as originally appraised\$3,710.00	

\$223,259.04

5,270.00

2,625.00 195,408.60 15,495.44

Promissory notes, desperate, Schedule Bb	\$21,876.82
value unknown	*****

200

### SCHEDULE A—(Continued).

Statement of Real Estate Included in the Trust.

Lot numbered 26 in square 71, No. 1112 New Hampshire avenue, Lot numbered 139 in square 235, No. 1303 M street, N. W., Lots 12, 13 and 14 in square 127, No. 1739 H street, N. W. Lot lettered D in square 211, No. 1424 Rhode Island avenue, Lots 41 and 42 in square 107, No. 1824 and 1826 L street, N. W. Lot numbered 140 in square 235, No. 1308 W street, N. W. Lot numbered 2 in square 304, No. 2009 12th street, N. W. Lot numbered 23 in square 304, No. 2011 12th street, N. W. Lot numbered 146 in square 235, No. 2132 13th street, N. W. Lot numbered 48 in square 240, No. 1332 R street, N. W. Lots 6, 7 and 21 in square 550, Nos. 207 and 209 R street, N. W. Lot 15 in square 307, Vermont avenue and R street, N. W. Lots 1, 6, 7, 8, 9, 17 and 24, block 6, "Edgewood", unimproved. Lot 28 in block 13, Le Driot Park, No. 322 Spruce street. Lot 187, Mount Pleasant, No. 3042 10th street, N. W. Lot 20 in square 72, No. 2112 M street, N. W. Lot 33 in square 388, No. 917 Desmond alley, S. W. Lot 119 in square 981, No. 814 12th street, N. E. Lot 37 in square 887, No. 727 L street, N. E. Lot 71 in square 887, No. 727 L street, N. E. Lot 14 in square 966, No. 1007 Mass. Avenue, N. E. Lot 51 in square 754, No. 520 3rd street, N. E. Lot 197 in square 855, No. 654 L street, N. E. Lot 25 in square 676, No. 20 H street, N. E. Lot 25 in square 676, No. 20 H street, N. E.

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### SCHEDULE A—(Continued).

Property From Which This Estate Receives the Rental.

Lot 33 in square 943, No. 917 North Carolina avenue, S. E. Lot 104 in square 623, No. 47 Defrees street.

Lot 51 in square 937, No. 421 9th street, N. E. Lot 50 in square 937, No. 419 9th street, N. E.

#### 202

#### SCHEDULE Aa.

#### Note Account.

Notes purchased, Schedule D	
Notes paid, Schedule C	07,271.41 11,862.81

Notes on hand, May 1, 1900, Schedule E. . . . . \$195,408.60

### Cash Account.

Received f Notes paid	rom Executors			$\substack{7,286.60\\111,862.81}$
Paid trust Ditto, Sche For legal se	indebtedness. edule F ervices		\$74,187.40 7,500.00 21,316.57 350.00 300.00	\$119,149.41
		-		$103,\!653.97$
Bala	ance principal of	on hand		\$15,495,44
203		SCHEDULE B.		
	Promissoru N	otes Received from	Frequence	
Albert, A.	P			\$4,200 00
				970 00
arms, John	1 1			1,385 35
Brown, Bea	trice,			500 00
Barnett, Al	onzo C			3.000 00
				1,000 00
Berryman,	W. O			1,200 00
Brewer, M.	В			500 00
Parrie, Geo	rge			2,500 00
Rort A E	. 1			900 00
Brown E	7			675 00
Baker F W	7			300 00
Bevans, W.	K			360 00
Bart, C. M	[			290 00
Bailey, J.	B			2,000 00
bettes, E. C				1,298.66
benson, E.	C			$\frac{1,000}{720} \frac{00}{00}$
Blodgett, E.	E. S			2.200 00
				2,200 00
Carroll, N.	C			520 00
Churchill	. J			120 00
Croncham 1	J. M			1,450 00
Colsen R A	n. 1			1.850 00
Collins W.	· · · · · · · · · · · · · · · · · · ·			400 00
Chapman A	ones			650 00
omplified, 2	ignes			600 00
Dougherty.	B. & P			1 000 00
Deitrich, R.	D. & A			$\frac{1,000}{4.000}$ 00
				7. (7(7() ()()

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Rea Ro Ra Ra Sec Ste Sel Sto Sec Sm Ste Str Sel Sec Sq1 Sm Ste Sin

Dangerfield, Wm	4,500 00
" "	4,500 00
" "	1,050 00
Danenhower, W	1,400 00
Dorsey, O	1,400 00
Dent, A. B.	210 00
Dunn, Kate A	30 00
Daniel W D	2 =00 00
Eggerstedt, M. E	2,500 00
Ebenezer Colored Church	$3,400\ 00$
71. 1. 1. 1	****
Fitzhugh, James S	520 00
Freeman, Jno. F	40 00
Geier, J. J	300 00
Graves, B. B. F	125 00
Grupe, Albert	12,000 00
Groff, D. B. 5 of \$2,500	12,500 00
" " 4 of \$2,000	8,000 00
" " 2 of \$1,000	2,000 00
u u u	11.150 00
<i>u u u</i>	5,440 00
	0,110 00
204 Hutchins, J. G	25 00
" " "	500 00
« « «	575 00
Holland, M. N.	1,000 00
Hubbard, V. A. 6 of \$1,750	10,500 00
Trusheten A W & I I	1.800 00
Hughston, A. W. & J. L	125 00
Heron, George W	
Henderson, Delia	300 00
Holt, R. O	2,000 00
Henry, M. R	2,140 00
Holman, B. W	4,000 00
	$3,750\ 00$
Higgins, Walter	1,000 00
30	200 00
Jones, W. W	
Jordan, H. C	350 00
Jenkins, Ida V	125 00
Kenealy, J. T. & M. E	300 00
Krohr, Jno. G	1.500 00
Kronr, Jho. G	400 00
King, J. J.	980 00
King, J. J	350 00
Klipstein, G. T	
Kelly, W. F	75 00
Lockhart, A. J. & M. M	320 00
Lively, C. H.	200 00
Lively, C. H Do P.	2.600 00
Lovett, Antoine, De B	400 00
Long, A. N.	
Lockhart, S. R. & A. W.	850 00

SAMUEL A. DRURY ET AL	103
Morisey, Emma	252 00
"	1,000 00
McQueen, H. L.	550 00
McCary, D. B	500 00
Musser, Wm	675 00
McLeran, J. E	3,500 00
Merwin, C. J	1.025 00
Mangum, R. C	1,200 00
Morrison, R. A	800 00
	480 00
McIntosh, John T	1,500 00
Melton, R. O. McKinlay, W.	100 00
	3,600 00
Nash, M. O	1,100 00
Newton, G. P. 6 of \$1,500	9.000 00
	800 00
Newcomb, H. M	25 00
Newman, Isaac N. C. Avenue Baptist Church	200 00
	15,000 00
Patee, E. S. G	205 00
Pulaski, George T	1,300 00
Peterson, Carl.	1.275 00
Peterson, Carl	120 00
Paxton, Wm. C	1,200 00
205 Pride, A. T. Pickford, Chas. R.	$\frac{150 \ 00}{2.000 \ 00}$
Purman, J. J.	75 00
Phillips, A. K.	3.000 00
15 66 66	785 00
Reavis, Albert F	
Rosecrans, J. E.	$880 00 \\ 3,750 00$
Raedy, D. J.	400 00
Ravenberg, M. Grace	1.610 00
Second Colored Baptist Church	
Stewart, Jno. F	2,750 00
Schultz, Frederick	525 00
Stone, Chas. P.	375 00
Scott, Joseph A	$1,175.00 \\ 575.00$
Smith, Nancy E.	650 00
Steinle, Frederick	1,900 00
Straver, M. M.	500 00
46 46	350 00
Schneider, Jane J	1,120 00
Scott, Robert E	210 00
Squires, Mary E	350 00
Szegedy, H. W. Smith, Wm. M.	100 00
Stevens, R. W.	150 00
Simpson, Chas. W	$180 00 \\ 11,000 00$
pools, Ollas, Tr	11.000 00

Thomas, E. M		510 00
Thompson, Emma J		25 00
Twoomey, Daniel		3,300 00
Thomas, A. A		800 00
Taylor, Fannie E		900 00
Taylor, Sarah A		225 00
Viele, H. K		68 00
W-11 A1- A		1.400 00
Wall, Amanda A		
Watts, Charles D White, W. P		525 00
White, W. P		75 00
Weed, L. W		1,700 00
Young, John		150 00
Young, A. H		320 00
Toung, A. II		020 00
		\$233,084.01
206	CHEDULE $Bb$ .	
List	f Desperate Notes.	
		207.00
Bolton, J. H		205 00
Boswell, W. J		$1,650\ 00$
Boswell, W. J		$\begin{array}{ccc} 1,650 & 00 \\ 640 & 00 \end{array}$
46 46 46		640 00
Clinkins, W. H		640 00 215 00
Clinkins, W. H Colt. W. D		640 00 215 00 500 00
Clinkins, W. H		640 00 215 00
Clinkins, W. H Colt, W. D Carter, Blanche		640 00 215 00 500 00 540 00
Clinkins, W. H Colt. W. D		640 00 215 00 500 00
Clinkins, W. H Colt, W. D Carter, Blanche Danenhower, "		640 00 215 00 500 00 540 00 2,100 00
Clinkins, W. H		640 00 215 00 500 00 540 00 2,100 00 180 00
Clinkins, W. H		215 00 500 00 540 00 2,100 00 180 00 800 00
Clinkins, W. H Colt, W. D Carter, Blanche Danenhower, "		640 00 215 00 500 00 540 00 2,100 00 180 00
Clinkins, W. H		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, "  Fox, Thomas C. Forrester, E. C. "  Goldstein, Jos. A. Gillis, A. H.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 380 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, "  Fox, Thomas C. Forrester, E. C. "  Goldstein, Jos. A. Gillis, A. H.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 380 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, ".  Fox, Thomas C. Forrester, E. C. "  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, ".  Fox, Thomas C. Forrester, E. C. "  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P.  Justice, L. C.  Lewis, Solomon		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00 200 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, ".  Fox, Thomas C. Forrester, E. C. "  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00
Clinkins, W. H. Colt, W. D. Carter, Blanche  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.  Lewis, Solomon Lewis, John E.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00 200 00
Clinkins, W. H. Colt, W. D. Carter, Blanche.  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.  Lewis, Solomon Lewis, John E.  Moore, H. P. McC.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00 200 00 790 00 2,500 00
Clinkins, W. H. Colt, W. D. Carter, Blanche.  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.  Lewis, Solomon Lewis, John E.  Moore, H. P. McC. Meriwether, J. H.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00 200 00 2,500 00 275 00
Clinkins, W. H. Colt, W. D. Carter, Blanche.  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.  Lewis, Solomon Lewis, John E.  Moore, H. P. McC. Meriwether, J. H. Morrison, R. A.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00 200 00 2,500 00 2,500 00 2,000 00
Clinkins, W. H. Colt, W. D. Carter, Blanche.  Danenhower, "  Fox, Thomas C. Forrester, E. C. ""  Goldstein, Jos. A. Gillis, A. H. Gilbert, H. P. Justice, L. C.  Lewis, Solomon Lewis, John E.  Moore, H. P. McC. Meriwether, J. H.		215 00 500 00 540 00 2,100 00 180 00 800 00 1,000 00 1,000 00 380 00 190 00 200 00 790 00 2,500 00 2,500 00 2,000 00 325 00

8	SAMUEL A. DRURY ET AL.		105
		120	
		120	00
Raub, Anna M		550	00
Selman, J. W		60	00
Smith, James H	************************	750	00
Welch, H. S		3,429	
Worthington J Y		2,233 590	-
Wilson, Edward		385	
		\$26,907	.96
207	SCHEDULE Bbb.		
V-11-00 · · · · · · · · · · · · · · · · · ·	1 1121 1 112 1 1 1 1 1 1 1 1 1 1 1 1 1		
Notes and Claims in 1	nventory, Which Were not Acce Trustees.	pted by	the
Chittenden, G. B		1,570	00
66 66 66	********************	1.000	00
66 26 66		360	00
		200	00
Cooke, H. D		1,500	00
Clarke, T. H		1,000	00
Cooke, H. D. & Anna.	• • • • • • • • • • • • • • • • • • • •	2,300	00
Maniputt H		260	00
Prott & Sons		9.100	00
Spalding H		$\frac{2,160}{3,000}$	00
Sander J N	*************	575	00
Sanger, R	* * * * * * * * * * * * * * * * * * * *	2,836	82
		4.800	00
	Y	300	-
	_	201 080	-
		\$21,876	.82
208	SCHEDULE C.		
	Promissory Notes Paid.		
Albert, A. P		4,170	00
Arms, John T		815	75
Brown, E. C		300	
Dart, A. F		300	00.
Barnett, A. C		250	
Daker, F. W		360	
Rart C M		290	
Bailey I B	*******************	2,000	
Bettes E. C		1,298	
14—2265A		1,000	00

Belt, Laura V Benson, E. C Boyd, W. A. & F. A Blodgett, E. E. C	$750 \ 0$ $720 \ 0$ $526 \ 3$ $2,200 \ 0$	00 37
Callis, Wm. A. Carroll, M. C. Churchill, J. M. Crenshaw, R. P. Crawford, J. J. Chapman, Agnes	650 ( 240 ( 300 ( 316 5 570 ( 600 (	00 00 53 00
Dougherty, B. & P. Dent, A. B. Dunn, Kate A. Dangerfield, W. B. Drury, Ida F. Dulaney, C. S.	1,000 ( 210 ( 30 ( 1,050 ( 1,000 ( 8 5	00 00 00 00
Eggerstedt, Mary C	2,500 ( 1,300 (	
Fitzhugh, J. S Freeman, John S	200 ( 40 (	
Geier, J. J. Graff, Diller B. 2 of \$2,500 Graves, B. B. F. Grupe, Albert.	$\begin{array}{c} 250 \\ 1,200 \\ 5,000 \\ 125 \\ 12,000 \end{array}$	00 00 00
Heron, George W. Henderson, Della A. Heckett, Mary A. Hutchins, J. G. Holt, Robert O. Henry, Mary R. Holland, M. M.	125 ( 300 ( 40 ( 50 ( 2,000 ( 2,140 ( 1,000 (	00 00 00 00 00
Jones, W. W. Jordan, H. C. 209 Jenkins, Ida V.	200 ( 350 ( 125 (	00
Klipstein, G. T. King, J. J. Krehr, John G. Kelly, Wm. F.	350 ( 980 ( 400 ( 75 (	00 00 00
Lockhart, A. J. Lockhart, G. R. & A. W. Long, A. N. Lively, C. H.	120 ( 850 ( 400 ( 130 (	00 00 00

SAMUEL A. DRURY ET AL.	107
M.Oussey II I	175 00
McQueen, H. L	100 00
Milton, Ř. O. Musser, Wm.	195 00
Merwin, C. S.	900 00
Morrisey, E. S.	234 00
McCary, D. B.	500 00
McKinlay, W.	3,800 00
Morrison, R. A.	180 00
MOTTISON, A. A	100 00
Newman, Isaac	200 00
N. C. Avenue Baptist Church	1.500 00
Newcomb, H. M	25 00
Newton, George P	500 00
Pulaski, G. T	25 00
Patee, E. S. G.	130 00
Paxton, Wm. C	1.200 00
Pride, A. T	150 00
Purman, J. J.	75 00
Petersen, Carl	60 00
Phillips, A. K.	3,000 00
" " " "	785 00
Pickford, Chas. R	2,000 00
TRANSPORTER	
Reavis, A. S	400 00
Raedy, D. J	400 00
Rushinberger, M	2,400 00
Ravenburg, M. Grace	1,610.00
	4 000 00
Second Colored Baptist Church	1,000 00
Schultz, Frederick	250 00
Scott, R. E	210 00
Squires, Mary E	350 00
Strayer, M. M	600 00
Szegedy, II. W	100 00
Schneider, J. J	1,120 00
Smith, Wm. M	150 00
Stevens, R. W	180 00
Scott, Jos. A	75 00
Simpson, Chas. W	11,000 00
Stewart, J. F	140 00
Stone, Chas. P	1,175.00
	150 00
Springer, W. P. 3 of \$50	150 00
210 Taylor, Fannie E	900 00
Taylor, Sarah A	225 00
Thomas, Eliza M.	360 00
Thomas, A. A.	550 00
Twomey, Daniel	3,300 00
Thompson, Emma J.	15 00
	4.17 500

68 00

 $\begin{array}{ccc} 75 & 00 \\ 300 & 00 \end{array}$ 

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H

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K

1.700

Weed, L. Walter

Young, Alice H. Young, John	300	00
*** *** *******************************	300	
Young, John	100	00
8,		00
	. 120	00
	\$111,862	.81
211 Schedule D.		
Promissory Notes Purchased.		
Belt, L. V. & A. G	750	0.0
Boyd, W. A. & F	526	37
Crawford, J. J	110	00
# # ## ## ## ## ## ## ## ## ## ## ## ##	100	
« « «		
***********************		56.00
		00
********************	60	2111
Crenshaw, A. P	66	53
Drury, Ida F	. 1,000	00
Dulaney, C. O. 2 of \$8.50 each		
Groff, D. B	. 2,000	00
77 1 1 1 NF A	100	F /
Hackett, M. A	108	90
King, C. W. 2 of \$15,000 each	30.000	00
" " " 3 of \$2,500 each	7,500	00
Palmer, W. J. 8 of \$2,000 each	16,000	00
" "8 of \$1,000 "	8,000	4.0
" "8 of \$300 "		
01 4000		1313
Rushenberger, Mary	2,400	00
Stone, Charles P	. 1.175	00
Springer, W. P. 3 of \$478 each	1,434	
Young, Alice H	. 300	00
	\$74,187	.40

### SCHEDULE E.

### Promissory Notes in Hand.

Albert, A. P	\$1,000 00 569 60
	000 00
Brown, Beatrice	500 00
Barnett, Alonzo C	3,000 00
	750 00
Detriman, William O	1,200 00
Brewer, Margaret B	500 00
Barrie, Geo	2.500 00
Boswell, W. I	900 00
Bart, Ambrose F	375 00
Carroll, Margaret C	280 00
Crawford, J. J	60 00
Churchill, J. M	1.150 00
Crenshaw, R. P	1,600 00
Colsen, R. A	400 00
Deitrich, Rose D. and A	4.000 00
Daingerfield, William B., 2 of \$4,500	9,000 00
Danenhower, W	1,400 00
Dorsey, Osborne	1,400 00
Dulaney, C. S	8 50
Ebenezer Colored Church	2,100 00
Fitzhugh, James C	320 00
Geier, J. J	
Croff D. P. 2 of \$9 500 and	
Groff, D. B., 3 of \$2,500 each	7,500 00
θ φ2,000 " " 9 e1 000 "	10,000 00
2 \$1,000	2,000 00
* * * * * * * * * * * * * * * * * * * *	9.950 00
	5,440 00
Higgins, Walter	1,000 00
Hubbard, Vincent A., 6 of \$1,700	10,500 00
Hughston, A. W. and J. L.	1.800 00
Hutchins, J. G.	500 00
************************	525 00
	25 00
Hackett, Mary A	68 50
Holman, B. W	4.000 00
** ** **	3,750 00
Knealy, J. T. and M. C	300 00
Krohr, John G	1,500 00
King, Chas. W., 2 of \$15,000 each	30,000 00
King, Chas. W., 2 of \$15,000 each	7.500 00

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# SCHEDULE E-(Continued).

Lockhart, A. J. Lively, Chas. H.	$\frac{200}{70} \frac{00}{00}$
Lovett, Antoine De B	2,500 00
Morresey, Emma.	1,018 00
McQueen, H. L	375 00
Musser, William	480 00
McLeran, John E	3,500 00
Merwin, C. S.	125 00
Mangum, R. C.	1.200 00
Morrison Rufus A	
Morrison, Kulus A	800 00
McIntosh John T	300 00
McIntosh, John T	1,500 00
Nash, Martha O	1,100 00
Newton, Geo. P., 6 of \$1,500 each	9,000 00
Newton, Geo. P., 6 of \$1,500 each	300 00
Potos E E C	75 00
Polymer William I 9 of 99 000 and	
Palmer, William J., 8 of \$2,000 each	16,000 00
\$1,000	8,000 00
\$300	2,400 00
Pulaski, C. T., 2 of \$1,275	2,550 00
Palmer, William J., 8 of \$2,000 each	60 00
Reavis, Albert F	480 00
Rosecrans, J. E. & I. A.	3,750 00
Second Colored Baptist Church	1.750 00
Stewart, John F.	385 00
Schultz, Frederick	125 00
Stone, Chas. P	1,025 00
Scott, Joseph A	500 00
Smith, N. E	650 00
Steinle Frederick	1,000 00
Steinle, Frederick	250 00
Strayer, Minnie M	1,284 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each	
Strayer, Minnie M	150 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each Thomas, Eliza M.	150 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J.	10 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J. Thomas, A. A.	
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J. Thomas, A. A.	10 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J.	10 00 250 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J. Thomas, A. A.  Wall, Amanda A. Watts, Chas. D.	$\begin{array}{c} 10 & 00 \\ 250 & 00 \\ \end{array}$ $1,400 & 00 \\ 225 & 00 \\ \end{array}$
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J. Thomas, A. A.  Wall, Amanda A. Watts, Chas. D.  Young, A. H.	10 00 250 00 1,400 00 225 00 270 00
Strayer, Minnie M. Springer, W. P., 3 of \$428 each  Thomas, Eliza M. Thompson, Emma J. Thomas, A. A.  Wall, Amanda A. Watts, Chas. D.	$\begin{array}{c} 10 & 00 \\ 250 & 00 \\ \end{array}$ $1,400 & 00 \\ 225 & 00 \\ \end{array}$

C

### SCHEDULE F.

# Account of Loans on Real Estate Paid by Trustees.

Proper	ty 1102 New Hampshire ave.  2112 M st.  1306 W St.  1424 Rhode Island ave.  1824-1826 L st.  1308 W st.  2009 and 2011-12th st.  1007 Mass. ave., N. E.  2132 13th st.  322 Spruce st.  20 H st., N. E.  207 and 209 R st.  3042 14th st.		719 600 570 468 1,820 4,340 3,180 252 3,785 240	91 00 00 00 00 00 00 00 00
			\$21,316	.57
215	SCHEDULE G.			
	Account of Income.			
	Dr.			
From Ren	erest on promissory notesdends n H. D. Cooke accountts of real estateest fees collected		\$12,930 279 288 5,688 10	$\frac{00}{44}$
	Cr.		\$19,196	.82
Pai Tra Exp Offi Tax Tru Aud Pay	erest paid d account H. D. Cooke evelling expenses eense preparing "Life" of testator ee and miscellaneous expenses ess, insurance and repairs estees' commissions ditor's fees ements to A. F. Magruder, guard-	\$58 34 837 77 100 00 40 00 179 90 4,709 87 2,074 16 50 00 9,100 00		10
	hand om Eliza C. Magruder trust	1,991 01 70 83	\$2,046	72

\$2,046.72

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### SCHEDULE H.

### Account of Eliza C. Magruder Trust.

#### Dr.

To Collection of note of Chas. H. Ruth.	\$3,000 2,300	00 00
	\$5,300	00
Invested in—	4-4	
Note of Ellen Curtin         \$2,000 00           " " Daniel Twoomey         3,300 00	5,300	00
z z	0,000	Utt
Dr.		
To Rents collected. " Interest "	\$824 333	
	\$1.158	20
" Am't eash on hand		
Am t cash on hand	161	04
Dr.	\$1,282	70
Taxes paid \$245 13		
Water rents paid		
Paid accrued interest on note purchased 86 35		
Paid for repairs		
Paid Eliza C. Magruder 972 94	=0	00
Borrowed from main trust \$70 83	70	83
By this method of accounting the balances of follows:	cash are	as
On account of principalincome	\$15,495 1,991	.44
Total	\$17,486	.45
In the Auditor's second account the items of cash carr from the first report are different, but the total is the separate by the following figures:		
Principal cash	0.00	
Total	\$17,486	47

The error of 2¢ occurred in the first statement of the E. C. Magruder trust account.

Inasmuch as the first order of reference in this cause called for a statement of the account of the executors, we subjoin hereto a copy of that account as presented to and passed by the probate court at Cambridge, Massachusetts, on the 24th day of April, 1899.

(89.)

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(R. L., c. 150, #2.)

(Rule IX. "No executor or administrator shall receive any compensation by way of a commission upon the estate by him administered but shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the Court in each case may deem just and reasonable. The account shall contain an itemized statement of the expenses incurred, and shall be accompanied by a statement of the nature of the services rendered and of such other matters as may be necessary to enable the Court to determine what compensation is reasonable.")

The first and final account of George F. Richardson and Samuel A. Drury, executors of the last will and testament of William A. Richardson, alleged in the petition for the probate of will and appointment of executors to have been late of Cambridge in the county of Middlesex, deceased.

This account is for the period beginning with the twenty-fourth day of November, 1896, and ending with the twenty-fourth day of April, 1899.

Said accountants charge themselves with the several amounts received, as stated in Schedule A, herewith exhibited

\$415,458.37

and ask to be allowed for sundry payments and charges as stated in Schedule B, herewith exhibited.

415,458.37

Balance as stated in Schedule C, herewith exhibited...

\$000,000.00

### GEORGE F. RICHARDSON, SAMUEL A. DRURY,

Executors.

The undersigned, being all persons interested (Isabel R. Magruder the daughter of the said William A. Richardson having died in April, 1898), having examined the foregoing account, request that the same may be allowed without further notice.

ALEXANDER R. MAGRUDER, ISABEL R. MAGRUDER

By Their Guardian, ALEXANDER F. MAGRUDER, SAM'L MADDOX, Trustee. SAM'L A. DRURY, Trustee.

COMMONWEALTH OF MASSACHUSETTS,

Middlesex, ss:

At a Probate Court Held at Cambridge in said County, on the 25th Day of April, A. D. 1899.

The foregoing account having been presented for allowance, and verified by the oath of the accountant, and all persons interested having consented thereto in writing, and no objections being made thereto, and the same having been examined and considered by the Court:

It is decreed that said account be allowed.

CHAS. J. McINTIRE, Judge of Probate Court.

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#### SCHEDULE A.

Amount of personal property, according to inventory or balance of next prior account	\$328,124.57
Amount of overdraft collected from Ida C. Magruder.	576.72
Discount on notes	1,200.25
Interest on notes	37,593.77
Dividends on stocks.	1,005.00
Reccipts from real estate	7,218.96
Amount collected a/c H. D. Cooke matters	1,000.00
Amount of personal — inventoried as doubtful	5,995.00
Amount of personal property inventoried as of "No	0,000.00
Value"	32,619.78
Net credit to Ida C. Magruder Trust Estate	124.32
The state of the s	124.52
	\$415,458.37
SCHEDULE B.	4110,100.01
Schedule B. Showing Payments, Charges, Losses, and Distrib	
Showing Payments, Charges, Losses, and Distril	butions.
Showing Payments, Charges, Losses, and Distril	butions.
Showing Payments, Charges, Losses, and Distrib Cost attending probate of will	311.75 325.50
Showing Payments, Charges, Losses, and Distrib Cost attending probate of will Funeral expenses of Judge Richardson Bills contracted by Judge Richardson	311.75 325.50 440.02
Showing Payments, Charges, Losses, and Distributed Cost attending probate of will  Funeral expenses of Judge Richardson Bills contracted by Judge Richardson Medical attendance for Judge Richardson	311.75 325.50 440.02 70.00
Showing Payments, Charges, Losses, and Distributed Cost attending probate of will  Funeral expenses of Judge Richardson Bills contracted by Judge Richardson Medical attendance for Judge Richardson Funeral expenses of Isabel R. Maggruder	311.75 325.50 440.02 70.00 327.00
Showing Payments, Charges, Losses, and District Cost attending probate of will  Funeral expenses of Judge Richardson Bills contracted by Judge Richardson Medical attendance for Judge Richardson Funeral expenses of Isabel R. Magruder.  Amount paid Isabel R. Magruder	311.75 325.50 440.02 70.00 327.00 17,400.00
Showing Payments, Charges, Losses, and District Cost attending probate of will  Funeral expenses of Judge Richardson.  Bills contracted by Judge Richardson.  Medical attendance for Judge Richardson.  Funeral expenses of Isabel R. Magruder.  Amount paid Isabel R. Magruder.  Amount paid to A. F. Magruder. Guardian.	311.75 325.50 440.02 70.00 327.00 17,400.00 8,200.00
Showing Payments, Charges, Losses, and District Cost attending probate of will. Funeral expenses of Judge Richardson. Bills contracted by Judge Richardson. Medical attendance for Judge Richardson Funeral expenses of Isabel R. Magruder. Amount paid Isabel R. Magruder. Amount paid to A. F. Magruder, Guardian. Maintenance of children, tuition, etc.	311.75 325.50 440.02 70.00 327.00 17,400.00 8,200.00 303.21
Showing Payments, Charges, Losses, and District Cost attending probate of will. Funeral expenses of Judge Richardson. Bills contracted by Judge Richardson. Medical attendance for Judge Richardson Funeral expenses of Isabel R. Magruder. Amount paid Isabel R. Magruder. Amount paid to A. F. Magruder, Guardian. Maintenance of children, tuition, etc.	311.75 325.50 440.02 70.00 327.00 17,400.00 8,200.00
Showing Payments, Charges, Losses, and Distril Cost attending probate of will. Funeral expenses of Judge Richardson. Bills contracted by Judge Richardson. Medical attendance for Judge Richardson Funeral expenses of Isabel R. Magruder. Amount paid Isabel R. Magruder. Amount paid to A. F. Magruder, Guardian. Maintenance of children, tuition, etc. Attorneys' fees Printing and distributing "Life of Wm. A. Richardson"	311.75 325.50 440.02 70.00 327.00 17,400.00 8,200.00 303.21 121.00
Showing Payments, Charges, Losses, and District Cost attending probate of will. Funeral expenses of Judge Richardson. Bills contracted by Judge Richardson. Medical attendance for Judge Richardson Funeral expenses of Isabel R. Magruder. Amount paid Isabel R. Magruder. Amount paid to A. F. Magruder, Guardian. Maintenance of children, tuition, etc. Attorneys' fees Printing and distributing "Life of Wm. A. Richardson" Insurance on furniture.	311.75 325.50 440.02 70.00 327.00 17,400.00 8,200.00 303.21 121.00
Showing Payments, Charges, Losses, and Distril Cost attending probate of will. Funeral expenses of Judge Richardson. Bills contracted by Judge Richardson. Medical attendance for Judge Richardson Funeral expenses of Isabel R. Magruder. Amount paid Isabel R. Magruder. Amount paid to A. F. Magruder, Guardian Maintenance of children, tuition, etc. Attorneys' fees Printing and distributing "Life of Wm. A. Richard	311.75 325.50 440.02 70.00 327.00 17,400.00 8,200.00 303.21 121.00

SAMUEL .	Α.	DRURY	ET	AT.

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Amount paid for various trust estates held by Judge Richardson  Net amount paid out on H. D. Cooke matters.  Protest fees Postage Stationery	16,731.64 318.57 19.30
Expense of administration including care of property, the payment of debts, the making of final account, the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and other sources, of \$58,168.94, the payment of about \$50,000 for repairs on real estate, the taking up of prior mortgages, taxes, etc., including also the payment of moneys to Isabel Magruder and to Alexander F. Magruder, the guardian of their minor children, counsel fees incurred in the defense of suits for taxes in Massachusetts and for counsel fees in Washington, etc	
The following money and property have been paid, delivered and transferred to Samuel Maddox and Samuel A. Drury, trustees, appointed by the Supreme Court of the District of Columbia:	114,426.66
Cash Household furniture Carriages, etc. Stocks Unused portion of burial lot. Claim against the United States Claim against Desmond Alley property Notes secured and unsecured.	7,332.31 3,710.00 725.00 7,895.00 230.00 1,000.00 390.00 279,839.40
-	0115 150 05

\$415,458.37

We, Samuel Maddox and Samuel A. Drury, trustees under the will of William A. Richardson, by appointment of the Supreme Court of the District of Columbia, hereby acknowledge that as said trustees we have received the property set forth in the last eight items of the foregoing account.

SAMUEL MADDOX. SAMUEL A. DRURY.

223 MIDDLESEX, 88:

APRIL 24, A. D. 1899.

Then appeared the within-named George F. Richardson and made oath that the within account is just and true. Before me-

> GEORGE R. RICHARDSON, Justice of the Peace.

DISTRICT OF COLUMBIA, 88:

APRIL 24, A. D. 1899.

Then appeared the within-named Samuel A. Drury and made oath that the within account is just and true.

Before me-

ALFRED B. DENT, Notary Public. [NOTARIAL SEAL.]

As shown in this account the notes secured and unsecured for which the executors were accountable aggregated	\$279,839.40
2,001.00	48,784.76
Aggregate of notes for which the trustees were liable as per the Massachusetts account and subsequent eliminations  224 Notes embraced in the first report of the Λu-	<b>\$231,054.62</b>
ditor, Schedule B, as being on hand April 1, 1899	\$248,569.01 120.00
Notes, total	248,689.01 15,605.01
Notes for which the trustees were accountable (as of date April 24, 1899)	\$233,084.01

In Schedule B of the Trustee's first report the total of notes received from the Executors should have been \$233,084.01, as shown above. In this aggregate are included 51 notes of a man named Pulaski, at a valuation of \$2590. (Auditor's first report.) In the inventory returned to the Massachusetts court, Schedule C, as "notes payable secured by second trust on real estate in Washington, D. C.", the executors returned 28 notes of Pulaski for \$15 each, and one note for \$20, aggregating \$440. Of these, \$400 were paid prior to April 24, 1899, and the remaining \$40 subsequently. These notes were appraised as being worth their face, \$440.

In the same inventory, Schedule F, the Executors returned two batches of Pulaski notes containing 51 notes each, and each note for \$50, the face value aggregating \$2550. But these notes were appraised in the inventory as being worth only \$1200, and as such

entered into the aggregate of Schedule F, totaling \$9750.

225 In other words, they were entered in the Auditor's account as being \$1350 more than as given in the inventory returned to the Massachusetts court. The difference, \$1350, should therefore properly be deducted from the aggregate of notes for

which the Auditor finds the Trustees accountable, and there remains \$231,734.01.

As shown above the aggregate of notes received from the Ex-

ecutors, after first deducting desperate notes, is \$231,054.62.

The Trustees thus account for \$679.25 more in notes than they are charged with having received from the Executors. This is no doubt due to errors of omission made either when the inventory was prepared, or the account of the Executors for final presentation to the Probate Court at Cambridge.

The same result, of course, is reached by stating the account of the Executors according to the inventory returned to the Probate Court at Cambridge by the Executors on the 16th day of February, 1897, and changes occurring in the account between that date and April 24, 1899.

The notes embraced in the inventory returned to the Massachusetts Court are as follows:

setts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	\$216,755.05 $76,961.00$ $9,750.00$ $5,995.00$ $32,619.78$ $900.00$ $2,000.00$ $155.00$
"E Note of John S. Boutwell. "Cook & Fletcher "Gregory  226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	$76,961.00 \\ 9,750.00 \\ 5,995.00 \\ 32,619.78 \\ 900.00 \\ 2,000.00$
"E  Note of John S. Boutwell. "Cook & Fletcher "Gregory  226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	9,750.00 $5,995.00$ $32,619.78$ $900.00$ $2,000.00$
"E. Note of John S. Boutwell. "Cook & Fletcher" "Gregory  226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	32,619.78 $900.00$ $2,000.00$
Note of John S. Boutwell.  "Cook & Fletcher  "Gregory  226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	32,619.78 $900.00$ $2,000.00$
226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	900.00 $2,000.00$
226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	,
226 Difference between notes paid and notes purchased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	155.00
Chased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	
Clased between December 1, 1896, and February 17, 1897, the date of the inventory.  Notes purchased between the date of the inventory and April 24, 1899  Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	<b>\$</b> 345,135.83
Total of all notes.  Add for note of C. A. Johnson put down in Massachusetts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	\$13,501.69
setts Schedule C as \$100, whereas it should have been \$1,000  Deduct notes paid between February 16, 1897, and April 24, 1899	166,958.21
Deduct notes paid between February 16, 1897, and April 24, 1899	\$525,595.73
April 24, 1899	900.00
	<b>\$</b> 526,495.73
	239,312.54
Deduct note of Hines & Ruth, which belonged to the E. C. Magruder trust \$5,500	287,183.19
Deduct one note of V. A. Hubbard for	
1,100	7,250.00

There were but six of these Hubbard notes for \$1,750 each, but

the appraisers returned seven such notes.

In making up the account for final presentation to the Probate Court at Cambridge, the aggregate given is \$279,839.40, or a difference of less than \$100, which was perhaps an error of addition At any rate it would be a matter of almost infinite trouble to now discover how the error occurred

227 In order to present in succinct form the character of the work devolved on the trustees, in the performance of the trust committed to them, we subjoin hereto a statement showing their dealings and transactions with the real estate which came into their custody as part of the trust estate and also a statement showing the transactions of the trustees from the beginning of their trusteeship, down to April 20, 1907, the date of the Auditor's last report, in respect of the collections of principal and interest and reinvestment of the principal in notes secured by first trusts on District real estate, in the payment of incumbrances on real estate belonging to the trust estate, and in the purchase of "Araby" as a summer home for the beneficiaries of Judge Richardson's will.

#### The Real Estate.

While this statement is entirely inadequate to show the amount of care, labor, responsibility and aunoyance involved in the matters referred to, owing to the peculiar character of the estate, it at least indicates that the duties of the trustees have been onerous and exacting.

### Lot 119, Square 981, No. 814-12th Street N. W.

At the time of the testator's death he held a series of second trust notes secured on this property and payable monthly. It was also subject to a first deed of trust securing the sum of \$2500.00. The owners failed to pay the notes and the executors acquired the property by foreclosure in January, 1897. They then held of the second trust notes \$740.00, and the first trust and interest amounted to \$2750.00 which was paid off, making the property cost the estate as follows:

Second trust notes charged up	\$740.00
First trust and interest	2750 00
Expenses of sale, etc	48.60

\$3538.60

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The trustees have collected the rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship. The trust estate still owns the property and it rents for \$19.50 per month.

### Lot 37, Square 812, 443 4th Street N. E.

At the death of the testator his estate held a series of second trust notes secured on this property and payable monthly.

The owners failed to pay the notes and the second trust was foreclosed. The executors acquired the property February 5, 1897 at which time they held, of said second trust notes, which were made by Mary A. Hackett, 21 of \$25.00 each, and the property was subject to a first trust which, with interest, amounted to \$2350.00, making the total charges against it as follows:

First trust and interest.	\$2350.00
Second trust and interest.	637.00

\$2987.00

The property was sold in June 1905, for \$3250.00, the purchaser defaulted and the purchase money trust was foreclosed August 6, 1908. The estate now holds a note for \$2,000.00, secured by first trust on this property. From 1899 to 1905, the trustees looked after rent, taxes, repairs etc.

# Lots 12, 13, 14 in Square 127, No. 1739 H Street N. E.

This property was the residence of the testator and came to the trustees subject to a deed of trust securing \$15,000.00 which they have paid. They have looked after the property and paid taxes, repairs and insurance, during the entire period of their trust.

# Lot 26 in Square 71, No. 1112 New Hampshire Avenue N. W.

At the death of the testator he held a series of second trust notes secured on this property, and payable monthly.

The owner ceased paying the notes and the executors took possession of the property and collected rents from April, 1897, at which time the estate held 17 of said notes, for \$50.00 each. The property was also subject to a first trust, securing \$5,000.

The trustees acquired title by deed under foreclosure proceedings, January 12, 1900, paid off the first trust and charged against the property \$850.00 of second trust notes.

The property still belongs to the trust estate and rents for \$28.50 per month. The trustees have paid taxes, repairs, insurance etc. and collected rents.

# Lot 139, Square 235, 1306 W Street N. W.

At the time of the testator's death he held a series of second trust notes secured on this property. The owner ceased paying and the executors foreclosed in May 1897, at which time they held \$600.00 of such notes. The property was subject to a first deed of trust securing \$4,000.00 which was paid by the trustees. This property is still a part of the trust estate and rents for \$30.50 per month. The trustees have paid taxes, repairs, insurance etc., and collected rents during the entire period of their trust.

### 230 Lot 140, Square 235, 1308 W Street N. W.

At the death of the testator he held 46 notes of M. Grace Ravensburg, for \$35.00 each, secured by second deed of trust on this property. The property was subject to a first trust securing \$3500.00. The owner ceased paying and the executors foreclosed under the second trust. The trustees paid the first April 15, 1901, and the second trust notes, \$1610.00 were charged against the property. The trustees have paid taxes, repairs, insurance etc., during the entire period of their trust and collected rents. The property is still a part of the trust estate and rents for \$30.00 per month.

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### Lot D, Square 211, 1424 Rhode Island Avenue N. W.

At the death of the testator he held 8 notes of \$40.00 and one of \$1910.00, total \$2230.00, made by Emily V. D. Miller and secured by second trust on this property. The owner ceased paying and the executors foreclosed in October, 1897. The property was subject to a first trust securing \$10,000.00, which was paid by the trustees. The trustees have paid repairs, taxes, insurance etc., and collected rents during the entire period of their trusteeship. The property is still a part of the trust estate and rents for \$50.00 per month.

### Lots 41 and 42, Square 107, 1824-26 L Street N. W.

At the testator's death he held 21 notes of Patrick Brennan, for \$25.00 each, secured by deed of trust on this property. The property was also subject to a prior deed of trust securing \$7800.00.

The executors foreclosed under the second trust, in January 1897 and the trustees paid the first trust after they took charge. The trustees collected rents, and paid taxes, repairs insurance etc., from the beginning of their trusteeship, down to 1902, when the property was sold for \$9,250.00.

### Lot 22, Square 304, No. 2009 12th Street N. W.

At the testator's death he held notes of Mary R. Henry, 53 for \$40.00 each and one for \$20.00, secured by second trust on this property, which was also subject to first trust securing \$4,000.00. The executors foreclosed under second trust and had control of the property from November, 1897. They paid the first trust debt in October, 1898.

The trustees have paid taxes, repairs, insurance etc. and collected rents during the entire period of their trusteeship.

The property is still a part of the trust estate and rents for \$30.00 per month.

# Lot 23, Square 304, No. 2011 12th Street N. W.

At the testator's death he held notes of E. E. S. Blodgett, 44 of \$50.00 each secured by second deed of trust on this property, which was also subject to a first trust securing \$4,000.00. The executors foreclosed under the second trust and had control of the property from November, 1897. They paid the first trust debt in October, 1898.

The trustees have paid taxes, repairs, and insurance, etc. and collected rents during the entire period of their trusteeship. The property is still a part of the trust estate and rents for \$30.00 per month.

# Lot 146, Square 235, No. 2132 13th Street N. W.

At the testator's death he held a series of second trust notes of M. C. Gaddess, secured on this property. The owner ceased paying and the executors foreclosed under second trust, having charge of the property from February 1898, and charging against it 33 of said notes of \$40.00 each. The property was also subject to a first trust securing \$4200.00, which was paid by the trustees in June 1900.

The trustees paid taxes, repairs, insurance etc. and collected rents during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$30.00 per month.

### Lot 48, Square 240, 1332 R Street N. W.

At the testator's death he held a series of notes secured by second deed of trust on this property, and it was subject to a first trust securing \$6500.00. In October 1898, 18 of the second trust notes for \$25.00 each were unpaid and the owner had ceased paying. The executors foreclosed under the second trust and paid the first trust debt in January 1899.

The trustees have paid taxes, repairs, insurance, etc. and collected

rents during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$45.50 per month.

# 233 Lot 15, Square 307, Vermont Avenue & R Street N. W.

At the testator's death he held a first trust note of Laura V. Stone for \$5500.00, secured on this property. The owner made default and the executors foreclosed, securing control of the property from December, 1898.

The trustees paid taxes, repairs and insurance and collected rents from the beginning of their trusteeship to May 19, 1906, when the property was sold for \$7,000.00.

### Lot 28, Block 13, Le Droit Park, 322 Spruce Street.

At the testator's death he held a series of notes secured by second deed of trust on this property and it was subject to a first deed of trust securing \$3,000.00. In March, 1898, 26 of the second trust notes for \$35.00 each, total \$785.00 were unpaid and the owner had ceased to pay. The executors secured a deed from the owner without foreclosure and had control of the property from March 1898. The trustees paid the first trust and charged off the second trust notes against the property, in January 1900, and have paid taxes, repairs, insurance etc., and collected rent during the entire period of their trusteeship.

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The property is still owned by the trust estate and rents for \$20.50 per month.

### Lot 187, Mount Pleasant, No. 3042 14th Street N. W.

At the time of the testator's death he held a series of second trust notes secured on this porperty. In January 1899, 74 of these notes of \$50.00 each were unpaid and the owner had ceased to pay. The property was also subject to a first deed of trust 234 securing \$4,000.00. The executors secured a deed from the owner, without foreclosure and the trustees paid off the first trust after they took charge.

The trustees have paid taxes, repairs, insurance, etc. and col-

lected rents during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$40.00 per month.

### Lot 20, Square 72, 2112 M Street N. W.

The testator, during his lifetime, had caused a foreclosure sale of this property and had procured D. B. Groff to bid it in for him and to give his note for \$6,000.00 secured on the property, at the same time holding the property for the testator. The trustees paid this note as the testator would have been bound to do. The title to the property is still in Mr. Groff, according to the record and the trustees hold an unrecorded deed. They have collected rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship. The property rents for \$30.00 per month.

### Lot 33, Square 388, 917 Desmond Alley.

The testator owned this property at the time of his death, but considered it as not worth the taxes due on it. The executors succeeded in cancelling the greater portion of the taxes, and perfected the title. The trustees have collected rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship. The property is still owned by the trust estate and rents for \$5.30 per month.

### Lot 14, Square 966, 1007 Mass. Avenue N. E.

At the testator's death he held a series of second trust notes secured on this property, the title to which was in Chas. T. Sparo. In November 1899, there were unpaid of these notes 35 of \$50.00 each, total \$1,750.00, and the property was subject to a first trust securing \$5,000.00. The owner had ceased paying. The trustees foreclosed under the second trust and charged against the property the \$1750.00 of second trust notes and \$2,000.00 of the first trust which had been taken up by the executors; also \$3,000.00 remaining of the first trust.

The trustees have collected rents and paid taxes, repairs, insurance etc., during the entire period of their trusteeship.

The property is still owned by the trust estate and rents for \$27.50.

# Lot 197, Square 855, No. 654 L Street N. E.

At the testator's death he held a series of second trust notes secured on this property and it was subject to a first trust for \$2,000.00. In September 1900, there were unpaid of the second trust notes, 20 of \$25.00 each and the owner had ceased to pay. The trustees secured a deed to the property, from the owner, without foreclosure and paid off the first trust. They collected rents and paid taxes, repairs, insurance etc., until March 1904 when they sold the property for \$3200.00.

### Lot 25, in Square 676, No. 20 H Street N. E.

At the testator's death he held a series of notes secured by second trust on this property and it was subject to a first trust securing \$4,000.00. The executors bought the property under foreclosure of the second trust, in February 1898, when there were due on the second trust notes, 24 of \$50.00 each, which the owner had ceased paying. The trustees paid the first trust note of \$4,000.00, in October 1900 and sold the property in May 1902 for \$6,000.00, having in the meantime, from the beginning of their trusteeship, collected rents and paid taxes, repairs, insurance, etc.

### Lot 15, Square 28, 25th & K Street- N. W.

At the death of the testator, he held notes for \$3750.00 secured by first deed of trust on this property, which is unimproved. The owners paid some interest and many expedients were resorted to by the executors and trustees to collect in full. Finally, the trust was foreclosed and the property bid in by the trustees, March 12, 1902, since which time they have paid the taxes.

### Lots 49 and 50, Square 1029.

The estate held a first trust note of W. I. Boswell, for \$900.00, secured on this property. The trust was foreclosed in October 1902, the trustees bought the property and held it until March 1903, when they sold it for \$1,000.00.

237 "Araby"—Farm near Frederick, Md.

This property was purchased by the trustees, under authority from the Court, in May 1901, for \$15,500.00. Since that time they have paid the taxes and kept the property insured.

Lot 5, Square 1282, No. 5 Cooke Place.

At the time of the testator's death he held 23 notes of Anna D. and Harry D. Cooke, for \$100.00 each, secured by second deed of trust on this property, which was subject also to a first trust, securing \$7,000.00.

The trustees foreclosed in October 1902 and bought in the property. They paid off the first trust and held the property, collecting rents and paying taxes, repairs, insurance, etc., until May 1905, when they sold the property for \$9,700.00.

Lot 15, Square 304 No. 1113 "U" Street N. W.

At the time of the testator's death he held 46 notes of R. P. Crenshaw, for \$50.00, secured by second deed of trust on this property. The executors and trustees collected nineteen of these notes, leaving unpaid 27, aggregating \$1350.00, after which the owner ceased to pay. The trustees took up a first trust for \$3,000.00 and on January 28, 1903, sold the property at foreclosure sale and bought it for \$3700.00. They held the property, collecting rents and paying taxes, repairs, insurance, etc., until July 1905, when they sold it for \$4500.00.

238 Lot 50, Square 937, No. 419 9th Street N. E.

At the time of the testator's death he held 51 notes of George T. Pulaski, of \$25.00 each secured by second deed of trust on this property, which was subject also, to a first deed of trust securing \$2,000.00. The second trust notes were appraised at \$600.00.

The owner ceased paying and the executors took charge of the property and collected rents from November 1898. The trustees took charge, in the same way, at the beginning of their trust and have collected rents and paid taxes, repairs, insurance, etc., down to the present time. In June 1902, they paid off the first trust of \$2,000.00, and on July 14, 1902, acquired title to the property under foreclosure proceedings. It still belongs to the trust estate and rents for \$20.50 per month.

### Lot 51, Square 937, 421 9th Street N. E.

The history of this property is identical with the parcel next above mentioned, down till January 4, 1907, when the trustees sold it for \$3400.00.

# Lot 104, Square 623, No. 47 Defrees Street.

At the time of the testator's death he held 40 notes of R. A. Morrison, for \$20.00 each secured by second deed of trust on this property, which notes were inventoried as doubtful, and the property was subject to a first trust securing \$1500.00. The owner ceased to make payments and the Executors got control of the property and collected rents, without any title to it, from April 1897. The trustees

239 had control, in the same way, from the beginning of their trust and have collected rents and paid taxes, repairs, insurance, etc., down to the present time. They took up the first trust loan and furing the present year acquired title to the property by foreclosure proceedings. It is still the property of the trust estate and rents for \$15.40 per month.

# Lots 1, 6, 7, 9, 17 to 24, Block 13, Edgewood.

At the testator's death he held 29 notes of Harry S. Welch secured by deed of trust on this property, upon which there was a balance due of \$5662.96, and 16 notes of Rachael Sanger, aggregating \$2836.82, similarly secured but wholly unpaid. These notes were all inventoried as "desperate."

The trustees acquired title to the property under foreclosure sales October 12, 1902, and January, 1903, charging against it as purchase price, the amount of the notes in question. They sold lot 18 for \$850.00, in April, 1903. They have paid the taxes on the property since they acquired it and it is still owned by the trust estate.

# Lots 6, 7, and 21, Square 550, Nos. 207 and 209 R Street N. W.

At the time of the testator's death he held notes of Thos. F. Barry, amounting to \$950.00, secured by second trust on this property which was subject also to a first trust securing \$6500.00. The owner ceased paying and the executors acquired title to the property under foreclosure sale in November, 1898. The trustees took charge from

the beginning of their trusteeship, collected rents and paid taxes, repairs, insurance, etc., paid the first trust in May 1901 and sold the property in March 1902 for \$8,000.00.

# Lot 71 in Square 887, 727 L Street N. E.

This property was owned by the testator at the time of his death. The trustees collected rents and paid taxes, repairs, insurance, etc., from the beginning of their trusteeship, down to May, 1906, when they sold the property for \$2,133.72.

#### The Personal Estate.

The trustees have stated five accounts before the Auditor of the Court. In the following statement the data have been compiled

with reference to the periods covered by these reports.

When the inventory of this estate was returned, February 23, 1897, about four months after the death of the testator, it showed, among other items of personal property, more than three thousand promissory notes made by a very large number of persons and in part secured on real estate in the District of Columbia, as follows:

Notes secured by first deed of trust	(at	least)										118
Notes secured by second deed of trust	( "	" )				9	9	9	0	0 1		2.055
Notes partially secured	( "	" )										322
Notes desperate, security worthless	( "	" )										487
Notes of some value, doubtful	1 46	" )		•	0	0					-	58
		,	٠	0	۰	0		٠			. 0	90

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The executors pursued the policy of collecting the second trust notes and the doubtful notes, as rapidly as possible and investing the proceeds in well-secured first trust notes or in paying incumbrances upon real estate which became necessary to bid in at fore-closure sales or otherwise acquire.

When the trustees took charge of the estate of April 24.
1899, they received from the executors, of the foregoing notes after eliminating desperate and uncollectible notes, including those purchased by the executors, at least 1.520.

Summary of transaction during period of Auditor's first report:

Collected on principal of notes, the same being re-	
ceived in eight hundred and forty-nine payments Collected in interest on notes, the same being re-	\$127,467.81
Reinvested in the purchase of notes, forty-nine notes	\$13,939.99
Reinvested by paying off trusts on real estate as	\$74,307.40
quired, seventeen transactions	28,816.57

\$103,123,97

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Summary of transactions during period of Auditor's second report:

Collected on principal of notes, the same being re-	,
Collected interest on notes, the same being received	\$54,893.10
in eleven hundred and five payments	\$20,046,99 \$12,004.83

\$41,300.00

SAMUEL A. DRURY E	T AL. 127
Reinvested in purchase of notes, fifty-one notes, aggregating. Reinvested by paying off trusts on real estate, thirteen transactions Reinvested in real estate purchased, two parcels	\$33,776.00 1
	\$89,739.21
Summary of transactions during periport:	od of Auditor's third re-
Collected on principal of notes, the same ceived in three hundred and sixty payn Collected interest on notes, the same ceived in seven hundred and seven hun	nents \$60,384.68
Collected from sales of real estate, if Reinvested in purchase of notes, forty not Reinvested by paying off transfer	five parcels. \$17,589.20 \$20,200.00 \$17,240.00
quired, ten transactions	\$51,659.54
Parcels of real estate acquired, five.	\$68,899.54
Summary of transactions during period port:	d of Auditor's fourth re-
Collected on principal of notes, the same ceived in seventy-five payments	\$23,568.00
in two hundred and eighty-one payment	ts \$10,733.49
Reinvested in purchase of real estate, five tran	nsactions \$17,939.59
Reinvested by paying off trusts on real	otes \$15,000.00 estate, two
parcets	*18,000.00
	\$33,000.00
Summary of transactions during period	of Auditor's fifth report
Collected from principal of notes the	
Collected interest on notes the same has	ayments. \$29,393.00
Reinvested in purchase of petate, three parc	rels \$8,930,42
Reinvested by paying of the notes.	*35,150.00
	1
transaction .  Reinvested in purchase of real estate, one pa	*6,000.00
ested in purchase of notes, fourteen neested by paying off trusts on real cels  mary of transactions during period ded from principal of notes, the same ded in one hundred and twenty-one payed interest on notes, the same being wo hundred and forty-eight paymen ded from sales of real estate, three parcested in purchase of notes, ten notes.	sactions. \$17,939.59 otes \$15,000.00 estate, two \$18,000.00  \$33,000.00  of Auditor's fifth report: being reayments. \$29,393.00 g received tts \$11,250.60 ests \$8,930.42 \$35,150.00

#### General Summary of Five Reports of Auditor. 243

In paying off 43 trust notes.....

In purchase of 3 parcels of real estate.....

Collected principal of notes in 1833 payments  Collected interest on notes in 3287 payments  Collected from 15 sales of real estate	\$295,705.59 \$72,560.27 \$58,074.84
Total collections from these three sources	\$426,340.70
Reinvestments.	
In purchase of 164 notes	\$175,473.40

\$20,600.13 Total reinvestments ..... \$336,062.72

The foregoing does not include under the head of reinvestments, the numerous transactions where real estate was acquired under foreclosure sales or by direct deeds from the owners where the foreclosure was had or the deed obtained, on account of second trust indebtedness. It includes only the sums paid out to take up first trusts on property thus held or acquired, or owned by the testator at the time of his death. The history of the various transactions is shown in the separate statement concerning the real estate.

An examination of the schedules and the Auditor's reports shows that the estate, coming into the hands of the trustees, consisted largely of promissory notes secured by second deeds of trust on real

estate in the District of Columbia.

Wherever it was possible these notes, some of them for small amounts, were collected and the proceeds invested in first trust notes or used in paying off incumbrances on real estate belonging to the trust estate.

As collections were made, whether of first or second trust notes. the money was exclusively invested in loans secured on real estate in the District of Columbia, some at five per cent. per annum and some at six per cent., but none at less than five. except as it was used to pay off incumbrances as above stated.

Every dollar of principal so invested and the interest thereon, as it matured, was paid, and not one dollar lost to the estate on any

investment so made by the trustees.

Such investments necessitated a great deal of work on the part of the trustees, but they yielded more income, because good bonds, of the kind that trust funds are usually invested in, return not more than four per cent, and can be had only at a premium.

SAMUEL MADDOX. SAM'L A. DRURY.

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\$139,989.19

July 7, 1909.

# Complainants' Exceptions to the Auditor's Report.

Filed March 30, 1910.

Now come the complainants, Alexander R. Magruder and Isabel R. Magruder, by their solicitor, and take and present the following exceptions to the Auditor's report filed herein on the 16th day of March, 1910:

1. They except to the Auditor's finding, "that the trustees are well entitled to the commission which they claim, five per cent. on that part of the principal upon which they have received no com-

missions and ten per cent. on the income."

Rep., p. 16.

2. They except to the Auditor's finding that the amount of the "principal estate" on which a commission is now chargeable is to be held to be and considered the amount of the personal estate received by the trustees from the executors and the proceeds of the sale of certain real estate without taking into consideration and without reference to the amount of the "principal estate" or the amount of the personal property that was actually turned over to the beneficiaries under the final decree of distribution entered July 9th, 1909, notwithstanding the fact that the "principal estate" and the personal property received by the beneficiaries was greatly less than the "principal estate" and personal property received by the trustees.

3. They except to the Auditor's finding that the "principal estate" on which the trustees are entitled to a commission 246 of five per cent. is the sum of \$313,321.34 and that there

is now payable to the trustees out of the money in their hands five per cent, on that amount, which is \$15,666.06 less \$2,348.10 heretofore paid to the trustees as commissions on sales of real estate, the net amount found due as commissions on the principal estate being \$13,317.56.

Rep., p. Scheds. I & J.

4. They except to the Auditor's finding that in determining what is justly due to the trustees as commissions and payable out of the moneys in their hands, no consideration is to be given to and no charge or deduction is to be made for or in respect or on account of the sum of \$16,100, received by Mr. Drury of the moneys of the estate after the appointment of the trustees under the decree entered in this cause on April 1st, 1899, and retained by him as compensation for his services alleged to have been previously rendered.

Rep., p. 3, et seq.

5. They except to the Auditor's finding that the sum of \$18,800, being the first item of credit claimed by the trustees in their first account and credited as "commissions to executors allowed by Probate Court," should not be charged to the trustees or considered in

determining what compensation or commission the trustees are entitled to in addition to what they have already received.

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Rep., p. 3, et seq.

6. They except to the Auditor's finding that the admitted fact that the firm of which the trustee Drury is a member, the firm of Arms and Drury, sold at their face value with accrued interest to the trustees, Drury and Maddox, several hundred thousand dollars' worth of promissory notes, which the firm of Arms and Drury had bought at a discount, "has no bearing on the question presented for determination and report," the question being what commission Mr. Drury is now entitled to on the principal of the estate.

Rep., p. 7 et seq.

7. They except to the Auditor's refusal to make any inquiry as to the amount paid by Arms and Drury for the notes sold to the trustees and to his refusal to consider the pecuniary profits derived by Mr. Drury from the sale to the trustees of notes purchased of Arms and Drury; a proper and material matter to be taken into account in determining what compensation the trustees are entitled to receive in addition to what they have already received.

8. They except to the Auditor's finding in respect of such purchase by the trustees and in the absence of any evidence proving or tending to prove that such purchase by the trustees of their own firms are customary, and that as "the customs with respect to these transactions are so well known and so well fixed that it might perhaps be well claimed the Court may take judicial notice of them."

Rep., p. 9.

9. They except to the Auditor's finding that whatever commissions were paid to Arms and Drury for the collection of rents or for the placing of insurance, etc., and whatever moneys were obtained

by Arms and Drury from the sale of notes to the trustees in excess of the sums paid by Arms and Drury for the notes so sold are matters which do not in anyway affect the question of the amount of compensation justly due to the trustee from the estate.

Rep., p. 7, 8 & 9.

10. They except to the Auditor's finding that Alexander R. Magruder is entitled to no commission or compensation as trustee.

11. They except to the Auditor's finding that of the cash balance which the Auditor finds to be in the hands of the trustees, to wit, the net sum of \$14,897.34, the trustees are entitled to retain \$14,046.82 and that the beneficiaries are entitled to be paid the remainder of said first-mentioned sum, to wit, \$850.52, and no more, and they say:

(a) That there was no sufficient evidence before the Auditor to prove that the services of the trustees were reasonably worth the

amount allowed by the Auditor.

(b) That the compensation found by the Auditor to be due to the trustees is grossly excessive, in view of the fact that the amount of the principal estate turned over to the beneficiaries in pursuance of the decree for division entered July 9th, 1909, including real estate is but \$261,202.21, and excluding the value of the real estate and money in the hands of the trustees is but \$122,251.47, while the amount of the commissions found due the trustees, including what they have already been paid, and including the sum paid to Mr. Drury, executor and trustee, is \$47,782.12, and excluding the amount paid to Mr. Drury, executor and trustee, is \$26,284.12.

249 (c) That such compensation is grossly excessive and unwarranted, in view of the erroneous basis on which the commissions allowed to the trustees are reckoned by the Auditor, and in view of the pecuniary profit and advantage the defendant Drury

has obtained from his dealings with the estate.

12. They except to the finding of the Auditor in respect of the trustees' first account approved by the Auditor, that he has no authority to open or reform said account or pass upon the allowance to the executors, and the credit to the trustees appearing therein, while at the same time he finds that "a tacit understanding appears to have been arrived at by counsel that the account should be reopened," and proceeds to reopen the account, and to himself personally ascertain from the books of Mr. Drury, what the transactions of the trustees were, and what moneys of the estate were received by them from the date of their appointment, April 1st, 1899, and the 24th of April, 1899, and makes use of the facts so ascertained in fixing the sum on which the trustees are allowed a commission of five per cent.

Report, p. 4, Schedule I.

13. They except to the Auditor's finding that the present audit will terminate the trust of the trustees, and they aver that the bill of complaint filed in this cause, the answer of the defendant Drury thereto, the decree appointing the trustees, the order of reference passed herein on the 18th of October, 1899, and the proceedings of the Auditor herein, entitle them to an accounting in this court

by the said trustees in respect of the entire estate of William A. Richardson, deceased, not only as to the estate and property 250 which the trustees received from the executors, but also as to the estate and property received by the executors, of whom Samuel A. Drury was one, he also being a trustee, and particularly as to the estate and property which was disposed of with the consent and cooperation of the trustees; and they aver that the accounts of the trustees cannot be finally stated until such an accounting is had.

14. They except to the Auditor's finding that the Auditor's fee of \$600 is chargeable to the beneficiaries and payable out of the

eash in the hands of the trustees.

NATHL. WILSON. Sol. for Compl'ts.

### Decree Overruling Exceptions.

Filed November 7, 1910.

This case came on to be heard upon the plaintiffs' exceptions to the Auditor's Report numbered from one to fourteen inclusive, and the same having been heard upon the arguments of counsel and on their briefs, and having been considered upon the whole record, it is now adjudged and decreed; That said exceptions are and each of them is, insufficient to require the recommitment of the case to the Auditor; and it is ordered that said exceptions be, and

251 they hereby are severally overruled.

Done in Court this seventh day of November, A. D. 1910. WENDELL P. STAFFORD, Justice.

#### Final Decree.

### Filed November 15, 1910.

This cause having come on for hearing upon the exceptions to the final Report of the Auditor therein, filed on the 16th day of March. 1910, having been argued by the solicitors for the respective parties. and duly considered by the court, and the said exceptions having been overruled by an order passed herein on the 7th day of November, 1910, it is thereupon by the court, this 15th day of November. A. D. 1910, further adjudged, ordered and decreed, that the said Auditor's Report be, and the same hereby is, finally ratified, confirmed and approved; that Samuel A. Drury and Samuel Maddox. the Trustees by the court in this cause appointed, be, and they hereby are, authorized and directed to make distribution of the trust funds remaining in their hands as such Trustees in accordance with the said Report, and that, upon their filing in this cause their vouchers, showing such distribution by them, the said Samuel A. Drury and Samuel Maddox be, and they hereby are, discharged of and from their said office of Trustees under their said appoint 252

52 ment by the court in this cause.
WENDELL P. STAFFORD, Justice.

From this decree an appeal is noted in behalf of the plaintiffs and the amount of the bond, to operate as a supersedeas, is fixed at the sum of one thousand dollars.

WENDELL P. STAFFORD, Justice.

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Appeal of Plaintiffs to Court of Appeals.

Filed November 29, 1910.

Now, to wit November 29, 1910, come the plaintiffs, Alexander R. Magruder and Isabel R. Magruder, and appeal to the Court of

Appeals of the District of Columbia from the decree and order of the Court entered herein on the seventh day of November, A. D. 1910, adjudging that the plaintiffs' exceptions to the Auditor's report are insufficient to require the recommitment of the case to the Auditor and ordering that the plaintiffs' exceptions to the Auditor's report be severally overruled; and from the decree of the Court entered herein on the fifteenth day of November, A. D. 1910, finally ratifying, confirming and approving the Auditor's report therein mentioned, and directing the trustees therein named to make dis-

tribution of the trust funds remaining in their hands as such trustees in accordance with said report, and discharging the 253 trustees therein named from their office of trustees under their

appointment in said cause.

NATHL. WILSON. Attorney for Plaintiffs.

#### Memorandum.

November 29, 1910.—Bond by Plaintiffs on appeal for \$1,000 approved and filed

Designation of Record.

Filed December 2, 1910.

To the Clerk of the Supreme Court of the District of Columbia:

In making up the transcript of the record for transmission to the Court of Appeals, on the appeal taken to that Court by the appellants, the plaintiffs in said cause, from the decrees entered therein by the Supreme Court of the District of Columbia on the 7th and 15th days of November, 1910, you will please include in the transcript to be sent to the Court of Appeals the following parts of the record and of the following papers on file and constituting a part of the record in the case, namely:
1. The amended bill of Complaint.

254

2. The will of William A. Richardson, an exhibit to the bill

 The answer of Samuel A. Drury.
 The decree entered April 1st, 1899, appointing Samuel A. Drury and Samuel Maddox, trustees.

5. The order referring the case to the Auditor, entered October

18th, 1899.

- The Auditor's first report filed December 19th, 1909, and schedules attached, except B, C. D. E, F and G.
- 7. Order referring case to the Auditor January 15th, 1909. 8. Trustees' Sixth report and supplemental account filed as of January 17th, 1909, and to September 24, 1909.

9. Petition of Alexander R. and Isabel R. Magruder filed June 16th, 1909, and exhibit D to petition.

10. Decree of Partial distribution, July 9th, 1910.

 Second reference to Auditor after the death of Col. Payne, February 3rd, 1910.

12. The testimony taken before the Auditor returned with the Auditor's report and the evidence filed with the report, including—

13. The inventory filed in the Probate Court at Cambridge, Mass., February 1st, 1897.

14. The petition of Richardson and Drury, Executors,

255 to the Probate Court, April 4th, 1899.

15. Order of Probate Court to Executors, April 11th.

1899.

16. Account of executors filed in Probate Court April 25th

 Account of executors, filed in Probate Court April 25th, 1899.

17. Auditor's report and schedules, filed March 16, 1910. (Omitting schedules attached thereto containing lists of notes and enumeration of properties.)

18. Trustees' general statement, submitted to Auditor and returned

as Exhibit No. 3.

19. Exceptions to Auditor's report, filed March 30th, 1910.

- Decree overruling exceptions, entered November 7th, 1910
   Decree directing distribution according to Auditor's report.
- 22. Appeal to Court of Appeals, filed November 29th, 1910.

23. Bond.

NATHL. WILSON, C. R. WILSON, For Pl't'fs & Appellants. 4

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256 Supreme Court of the District of Columbia.

United States of America, District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing numbered from 1 to 255, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 20037 in Equity, wherein Alexander Richardson Magruder, et al. are Plaintiffs and Samuel A. Drury, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District.

this 14th day of January, 1911.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2265. Alexander R. Magruder et al., appellants, vs. Samuel A. Drury et al. Court of Appeals, District of Columbia. Filed Jan. 16, 1911. Henry W. Hodges, clerk.

# ADDITION TO RECORD PER STIPULATION OF COUNSEL.

# Court of Appeals, District of Columbia

JANUARY TERM, 1911.

No. 2265.

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER, APPELLANTS.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

# FILED MARCH 6, 1911.

Court of Appeals of the District of Columbia, January Term, 1911 No. 2265

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants, Samuel A. Drury and Samuel Maddox, Trustees, Appellees.

It is hereby stipulated by and between the counsel for the appellants and the appellees in the above entitled cause that Schedules A, B. D, E, G, H, I and J, hereto annexed and certified to by the Clerk of the Supreme Court of the District of Columbia as being true copies of original schedules filed with the Auditor's report, shall be filed and considered as a part of transcript of record herein.

March 4, 1911.

NATH'L WILSON, Solicitor for Appellants. J. J. DARLINGTON. Solicitors for Drury & Maddox.

#### SCHEDULE A

Proceeds of sale of land and premises No. 421 9th Street, N. E. Nett proceeds judgment against United States	
Dr.  To Principal personal estate in hand per last report of Aug. May 17, 1907, as follows:  Household furniture and effects. Stock of Northern Railroad, 34 shares.  "Bigelow Carpet Co. 35" Promissory notes, per Schedule E	1,500.00 5,270.00 2,625.00 38,642.00
To Principal personal estate in hand per last report of Aud May 17, 1907, as follows:  Household furniture and effects. Stock of Northern Railroad, 34 shares.  "Bigelow Carpet Co. 35 Promissory notes, per Schedule E	1,500.00 $5,270.00$ $2,625.00$ $38,642.00$
Stock of Northern Railroad, 34 shares.  "Bigelow Carpet Co. 35 Promissory notes, per Schedule E	5,270.00 $2,625.00$ $38,642.00$
Proceeds of sale of land and premises No. 421 9th Street, N. E	1,389.81
Proceeds of sale of land and premises No. 421 9th Street, N. E	50,626.81
Cr. 15	3,400.00 500.00
Cr. 15	54,526.81
Cr.	54,526.81
By Auditor's Fees	1,984.31
Balance of principal personal estate	52,542.50
Consisting of the following:	12,042.00
Household furniture and effects	
Totals	2,542.50
The above balance of cash being subjected to the allow trustees' commissions on final accounting, as shown by 3 J, the actual balance of cash for which trustees are accounted by a stollows:	vances of Schedule
7 11	4,897.34 4,046.42
Actual balance of cash for which trustees are accountable	

28,980.31

14,897.34

To which add Stock not a to	101
To which add Stock, notes, furniture and other effects, per this Schedule	137,645.16
Total personal estate for which trustees are liable after deducting allowances	138,496.08
LOUIS A. DENT	

## SCHEDULE B.

# Principal Cash Account.

#### Dr.

То	Principal of notes collected.  Proceeds of sale of 421 9th St., N. E.  "" judgment against United States.	1,389.81 $38,587.84$ $3,400.00$ $500.00$
		43,877,65
	Cr.	
By	Principal of notes purchased.         26,996.00           Auditor's Fees         600.00           Transferred to income account         1 384.31	

# LOUIS A. DENT. Auditor.

# SCHEDULE D.

Balance of Cash .....

Account of Notes Paid and Notes Purchased Since Last Report.

### Dr.

To Notes paid as follows:	
Aguilar, Y. two notes \$500 each	1,000.00
	105.84
	1,500.00
" " Relence	1,400.00
" " Balance Holman, B. W., on account. King C. W. Jr.	700.00
King C W Jr	500.00
S. C. W., W	1.000.00
	500.00
Morrisey, Emma, 19 notes \$10. each	190,00
Newton, George F.	1.500.00
	8.000.00
500	2,000,00
The state of the s	2.000.00
notes \$24, each	168,00
<i>u u u</i>	14.00

Richardson, R. C., Balance.  Robinson, Jesse D., 2 notes \$500 each.  Simmons S. S. 18 " 25 "  Stein, Robert 20 " 28 "  Wardman, Harry 10 " 1,000 "  West, Catherine	3,500.00 $1,000.00$ $450.00$ $560.00$ $10,000.00$ $2,500.00$
	38,587.84
Cr.	38,587 . 84
By Notes purchased as follows:	
Aguilar, Y., 3 notes \$500 each 1,500.00 Brown, Lee 2,000.00 Brown, Lee, installment 1,400.00 Draper, W. A. 2,000.00 Lowery, George C., 2 notes \$1,000 each 2,000.00 Stein, Robert, 57 notes \$28, each 1,596.00 Wardman, Harry, 12 notes \$1,000 each 12,000.00 " 2 \$2,000 each 4,000.00  Cash proceeds of notes not re-invested principal per last report received since.	26,996.00 11,591.84 1,389.81 3,900.00
Less excess of expenditure on account of income	16,881.65
Auditor's fees	1,984.31
Balance cash per Schedule B	14,897.34
LOUIS A DEVE	1 J'1

# LOUIS A. DENT. Auditor.

## SCHEDULE E.

# Report of Real Estate Included in the Trust.

Square 71, Lot 26; premises 1112 New Hampshire Avenue; Title vested in trustees of estate; title obtained from Drury & Groff, trustees; date of Deed May 11, 1897; liber 2451, folio 247; Rental \$30.50; insurance \$2,500; assessed value 3,741.

Square 72, Lot 20; premises No. 2112 M St., N. W.; title vested in Diller B. Groff; rental \$35.00; insurance \$5,000; assessed value

\$4,120.

Square 28, Lot 15; unimproved; title vested in Drury & Maddox, trustees; title obtained from Drury and Heiskell trustees; date of deed, April 23, 1902, Liber 2645, folio 57; assessed value \$3,345.

Square 127, Lots 12, 13 and 14. Premiums 1739 H St., N. W. title vested in Wm. A. Richard and title obtained from N. L. Anderson; date of deed January 23, 1885; liber 1116, folio 47; insurance

\$10,000; assessed value \$30,449.

Square 211, Lot D; premises No. 1424 Rhode Island Avenue, N W.; title vested in Drury and Maddox, trustees; title obtained from Edmonston and Drury, trustees; date of deed, Sept. 21, 1897; liber 2236, folio 430; vacant; insurance \$6,000; assessed value \$8,031; Remarks, deed to E. F. Caverly and by him to trustee.

Square 240, Lot 48; premises 1332 R Street, N. W., title vested in Drury and Maddox, trustees; title obtained from Arms and Drury, trustees; date of deed, Dec. 2, 1898, liber 2375, folio 15; vacant; insurance \$5,000; assessed value \$4,500; remarks, deed to E. F. Cav-

erly and by him to trustees.

Square 235, Lot 140; premises 1306 W. Street, N. W., title vested in Drury and Maddox, trustees, title obtained from Drury and Groff, trustees, da. of deed, Oct. 27, 1897, liber 2891, folio 163; rental \$30; insurance \$3,000; assessed value \$2,590; remarks deed to E. F. Caverly and by him to trustees.

Square 235, lot 41, premises 1308 W. St., N. W.; title vested in Drury and Maddox, trustees; title obtained from Armes and Drury. trustees; date of deed, April 2, 1897, liber 2471, folio 149; rental \$30; insurance \$3,000; assessed value \$2,590; Remarks, deed to

E. F. Caverly and by him in trustees.

Square 235, lot 146, premises 2131 13th St., N. W., title vested in Drury and Maddox, trustees; title obtained from Drury and Groff, trustees; date of deed Mar. 8, 1898; liber 2306, folio 34, rental \$30; insurance \$3,500; assessed value \$3,093; remarks, deed to J. T. Armes and by him to trustees.

Square 304, lot 22; premises 2009 12th St., N. W.; title vested in Drury and Maddox, trustees; title obtained from Drury, surviving trustee; date of deed Nov. 3, 1897, liber 2882, folio 239; assessed value \$2.871; remarks, deed to J. T. Arms and by him to trustees;

rental value \$30; insurance \$2,500.

Square 304, lot 23, premises 2011 13th St., N. W., title vested in Drury and Maddox, trustees; title obtained from Drury, surviving trustee, date of deed Nov. 3, 1897; liber 2882, folio 331; rental \$30; insurance \$2,500; assessed value \$2,871; remarks deed to J. T. Arms and by him to trustees.

Square 386, Lot 33; premises 917 Desmond Alley; title vested in Drury and Maddox, trustees; title obtained from John T. Arms; date of deed, June 19, 1903; Liber 2723, folio 294; rental \$5.30;

no insurance; assessed value \$300

Square 966, Lot 14, premises 1007 Mass, Ave., N. E.; title vested in Drury and Maddox, trustees; title obtained from Charles T. Sparo; date of deed Nov. 26, 1894, liber 2471, folio 146; rental \$27.50; insurance \$4,000; assessed value \$3,366; remarks, deed to Drury and by him to trustees.

Square 981, lot 119, premises 814 12th Street, N. W., title vested in Drury and Maddox, trustees; title obtained from Arms and Randolph, trustees; date of deed, Dec. 19, 1896; liber 2192, folio 93;

rental \$20.50; insurance \$2,500; assessed value \$1,744; remarks,

deed to Drury and by him to trustees.

Square 937, lot 50; premises 149 9th Street, N. E., title vested in Drury and Maddox, trustees; title obtained from Drury, surviving trustee; date of deed, July 15, 1902, liber 2642, folio 453; vacant; insurance \$2,000; assessed value \$1,905.

Mt. Pleasant, lot 187; premises 3042 14th St., N. W., title vested in Drury and Maddox, trustees; title obtained from Alle Fort Gibbs; date of Deed, May 15, 1899, liber 2402 folio 86; vacant; insurance

\$3,000; assessed value \$3,814.

Block 13, Le Driot park, lot 28; premises 322 U. St., N. W., title vested in Drury and Maddox, trustees; title obtained from A. K. Philipps, trustee; date of deed Mar. 3, 1898, Liber 2451, folio 250; rental \$20.50; insurance \$2,500; assessed value \$2,011; remarks, deed to J. T. Arms and by him to trustees.

Block 6, Edgewood, lots 1, 6 to 9,—16, 18 to 24; uninaproved; title vested in Drury and Maddox, trustees; deeds from Leighton A Emmons, trustees; date of deeds Dec. 6, 1894 and Jan. 23rd, 1903; liber 2654, folio 466; and liber 2693 and folio 467; assessed value

\$4,190.

Block 10, Isherwood, Lots 1 to 7; unimproved; assessed value \$2,065; remarks, Drury and Maddox, trustees, hold the tax title to these lots, but have never foreclosed under the deed of trust which they hold, which was made by James H. Meriwether.

Araby Farm; title vested in Drury and Maddox, trustees; title

obtained from Mina L. Mercer; insurance \$8,900.

LOUIS A. DENT. Auditor.

## SCHEDULE G.

Account of Trustees of the Eliza C. Magruder Trust.

# Principal.

#### Dr.

To Principal personal estate in hand per last report of Auditor, as follows:

#### Notes:

Ellen Curtin	\$500,00
C. C. Dawson	1,000.00
D. W. Groff,	2,500,00
Harry Wardman	1,000,00
	5,000.00
Cash	300,00

5,300,00

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Coll	ecu	lons	

Notes of Wardman	1,000.00 1,000.00 500.00	2,500.00
Cr.		7.800.00
By Amount of Curtin note, paid Amounts reinvested in Chiswell &	500,00	
Kite Note Kite note Auditor's fees Amounts transferred to Income	1,000.00 $1,000.00$ $25.00$	
	165,13	2,690.13
Balance on hand		5,109.87
Consisting of notes of:		5,100.87
D. B. Groff	2,500.00	
II A Kite	1,000,00	
H. A. Kite	1.000.00	
Cash	609.87	
Totals	5,109.87	5,109.87

## Real Estate.

Property in St. Louis, Missouri.

Premises No. 1121 15th St., Northwest, in Washington, D. C. Premises No. 441, Franklin Street, Washington, D. C.

LOUIS A. DENT. Auditor.

# SCHEDULE H.

Account of the Trustees of the Eliza C. Magruder Trust.

# Income.

#### Dr

()	Balance of May 17	eash per	last	report	of .	Auditor	, filed	
	Collections of	of rent.						123.67 2.376.04
	Amount tra	" interest usferred	from	nring				759,31
				Princi	par.			165,13

8			
Cr.			·
By Taxes Repairs Water Rents Insurance Eliza C. Magruder	382.90 $411.75$ $45.00$ $34.50$ $2,550.00$		
Totals	3,424.15	3,424	. 15
LO	OUIS A. DEN	T, Auditor	
Schedule I.			
Showing Basis Upon Which Allowance	es Are Made	to Trustees	
Principal Estat	e.		
Amount of personal estate received fro per first report of Auditor		\$270,209	04
To which add:			
<ol> <li>Errors in note account per second repo</li> <li>Desperate notes of Boswell collected p</li> </ol>	rt of Auditor	2,385	00
port of Auditor	ond report of	2,090 $12,004$	
4. Proceeds of sales of real estate, per th		20,200	
<ul> <li>5. Proceeds of sale of real estate, per fou Auditor</li> <li>6. Proceeds of sale of real estate, per fit</li> </ul>		17,939	69
Auditor		8,930	
<ul><li>7. Proceeds of sale of real estate, per this</li><li>8. Net proceeds of judgment against Unit</li></ul>	report ed States, per	3,400	
this report		500	00
•		337,658	98
And from this deduct—			
Notes and cash part of principal, personal estate, not received from executors, but paid (per books of account of executors and trustees) between the date from which first report of Auditor covered, and the date to which the account of executors covered, viz, from April 1st to April 24, 1899, overlapping period of two accounts.	\$17.143 77		
Notes dropped from good assets per third report of Auditor as uncollec- tible	2,669 50		

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9	18.863	
Appraised value of household effects, etc., upon which commissions are not asked by trustees		64
Balance principal upon which trustees are entitled to commissions	\$313,321	34
Upon items 4, 5, and 6, added herein, the Auditon missions at 5% as shown in Schedule J, so that the upon which commissions are now properly allowable is	not minai	oni- ipal
Balance above	\$313,321 46,970	
Net	\$266,351	34
Income.		
Income per first report of Auditor	200 741	-0
" second " "	$$20,741 \\ 35,397$	83
" " third " " "	32,357	36
" fourth " "		19
" " fifth " " "	16,761	
" " this " " "	26,312	
Total income upon which trustees are entitled to commissions	\$152,184	76
From which deduct amounts upon which commissions were allowed by Auditor, first to fifth reports, inclusive, at 10%	125,872	06
Balance, income this account, upon which		
trustees are entitled to commission	\$26,312	
LOUIS A. DEN	T, Auditor.	
Schedule J.		
Statement of Allowances of Commissions to Samuel A Samuel Maddox, Trustees.	1. Drury a	nd
Commissions on net principal personal estate and proceeds of sale of real estate per Schedule I, 5% on \$313,321.34  Less allowed on proceeds of real estate in third report of Auditor and deducted in fourth report, 5% on \$20,200	\$15,666	06

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Allowed on proceeds of real estate and deducted on fourth report of Auditor, 5% on \$17,839.69	
-	2,348 50
Net commissions on principal personal estate, at 5%, chargeable against the cash balance in the hands of trustees.  Commissions on net collections of income, per Schedule I, 10% on \$152,184.76.  Less allowed first report of Auditor, 10% on \$20,741.59	\$13,317 56 15.218 47
\$16,761.09	
	12,587 20
Net commissions on income, 10%, chargeable against the cash balance in the hands of the trustees  Recapitulation of Allowances.	<b>\$2,631</b> 27
	*** *** ***
On principal estate	\$13,317 56 2,631 27
Total allowances	15,948 83
Less commissions paid to agents:	
Third report of Auditor \$433 05 Fourth report of " 416 12 Fifth " " 445 03 This " " 408 21  \$1,702 41	
Less counsel fee allowed in first report of Auditor and charged back by consent	
200 00	1.902 41
Net commissions to trustee	\$14,046 42
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Cash in hands of trustees per Schedules, A, B and D  Less commissions above	\$14,897 14,046	
Balance of cash to be paid over by trustees	\$850	92
1.0	TITE A DI	1337

## LOUIS A. DENT, Auditor.

# Explanation of Differences in Cash.

Cash balance reported by trustees  Deduct Auditor's fee  Magruder trust interest  Additional credit, auctioneer since ac-	\$600 00 25 00		6 41
count filed	11 00		6 00
Add insurance to be refunded from Magrue and \$7.50 and \$20	ler trust \$7		1 50
Add differences expenses to agents total Less repairs	490 21	14,924	91
	82 00		
	408 21		
Down Allowed to repairs	82 00		
	62 00		
Difference loss on bond		20	00
Less agents' commissions refunded		14,944 47	91 57
Cash balance Auditor's report		\$14,897	34

# Supreme Court of the District of Columbia.

United States of America,

District of Columbia, 88:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify that the foregoing and annexed writings are true and correct copies of original Schedules, filed with the Au-

ditor's Report of March 16, 1910, in Equity Cause No. 20037, Alexander Richardson Magruder and Isabel Richardson Magruder, Plaintiffs, and Samuel A. Drury, Defendant, which schedules were inadvertently omitted from the transcript of record heretofore submitted to the Court of Appeals.

In witness wherof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this

3rd day of March, A. D. 1911.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, Clerk.

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[Endorsed:] No. 2265. Alexander Richardson Magruder et al. vs. Samuel A. Drury. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Mar. 6, 1911. Henry W. Hodges, Clerk.

# ALEXANDER R. MAGRUDER ET AL. VS. SAMUEL A. DRURY ET AL. 147

WEDNESDAY, October 11th, A. D. 1911.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,

Samuel A. Drury and Samuel Maddox, Trustees.

On motion the appellants are allowed to file memorandum herein if so advised.

The argument in the above entitled cause was commenced by Mr. Nathaniel Wilson, attorney for the appellants, and was continued by Mr. J. J. Darlington, attorney for the appellees.

Thursday, October 12th, A. D. 1911.

No. 2265,

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants, Samuel A. Drury and Samuel Maddox, Trustees.

The argument in the above entitled cause was continued by Mr. J. J. Darlington, attorney for the appellees, and was concluded by Mr. Nathaniel Wilson, attorney for the appellants.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants, Samuel A. Drury and Samuel Maddox, Trustees.

## Opinion.

Mr. Chief Justice Shepard delivered the opinion of the Court:

This is an appeal from a decree confirming the auditor's report settling the final account of the trustees of the estate of William A. Richardson, deceased, and ordering their final discharge.

Judge William A. Richardson died in the District of Columbia October 19, 1896, leaving a will executed August 9, 1895. He had resided in the District for many years, being at the time of his death Chief Justice of the Court of Claims. The will recites that he is a citizen and inhabitant of Cambridge, in the county of Middlesex, commonwealth of Massachusetts. After making certain special bequests, he devised and bequeathed all the rest and residue of his estate to his executors upon the following trusts: To collect the income of the principal, pay taxes, insurance, repairs, and other expenses. To expend so much of the income (and of the principal,

if necessary in case of an emergency) to be used as may be required for the support of his daughter Isabel Richardson Magruder and for the support and education of her children. If the daughter live until a child marries, has a family, or cease from any cause to live with her, then the income shall be apportioned among her and her children by the executors, in such proportion as they deem best, The executors are authorized to permit the daughter and children to occupy the residence in the city of Washington and to use the household goods, etc., or provide another residence for them, if in their discretion they should conclude to sell or lease the home-Provision was made for advancements to the children under It was provided that at the decease of the certain conditions. daughter the whole trust estate, including what remained of the original investments real or personal, made by the executors, and all personal chattels not used by his daughter in the maintenance of herself and family, should be given to the children of the daughter then living, or to the issue of any deceased child free and discharged from any further trusts, provided that one half shall be turned over to such child at the age of 23 and the other half at the age of 26 years.

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The executors were empowered to sell at private sale, and to convey any part of the real and personal estate; to execute any agreements to convey real estate, and any declarations of trust made by the testator which may be outstanding at the time of his decease.

George F. Richardson of Lowell, Mass., and Samuel A. Drury of Washington, D. C., were appointed executors of the will and no bond was required of them. A grandson, Alexander R. Magruder, was named to be appointed by the Probate Court an additional co-executor when he attained the age of 21 years.

Whenever a vacancy should occur in the office of executor, it was directed that in the place of George F. Richardson a Massachusetts man be appointed; in the place of Samuel A. Drury a business man of the city of Washington, or one of the loan and trust companies of the said city. It was provided that the executors shall be paid each for the actual services rendered by himself only and they shall not be responsible for each other's acts.

The final clause was: "Whatever powers, authority or discretion I have given to my executors I give to whosoever shall settle my estate, and I see no reason why my executors may not perform all the duties of the trust under their appointment as executors, without being specially bonded as trustees."

Pursuant to the request of the testator the said will was filed for probate in the Probate Court of Middlesex County, Massachusetts, and duly admitted to probate there. The testator left one child, his daughter Isabel, then the wife of Alexander F. Magruder. She died in the District April 4, 1898, leaving as her heirs at law and next of kin Alexander R. Magruder and Isabel R. Magruder. On December 30, 1898, the said Alexander R. Magruder and Isabel R.

Magruder by their father and next friend, Alexander F. Magruder filed a bill in the Supreme Court of the District naming George F. Richardson and Samuel A. Drury, defendants. Samuel Maddox, one of the appellees, filed the bill as solicitor of complainants. After reciting the facts relating to the will and the relationship of the complainants to the testator and the death of Isabel R. Magruder, the bill charged that said William A. Richardson had been a resident of the State of Massachusetts up to the 11th of April, 1872, at which time he became assistant secretary of the United States Treasury and removed with his family to the city of Washington, where he thereafter made his home until his death. During that period he was Secretary of the Treasury from the 17th of March, 1873, to 2d day of June, 1874; Associate Justice of the Court of Claims from July 2, 1874, to January 20, 1885, and Chief Justice of that court from January 20, 1885, to the date of his death. During all that time he continued to live with his family in the city of Washington, which he repeatedly declared was to be his home for the rest of his life. After removing to the said city, he did not exercise any of the rights of citizenship in the State of Massachusetts and did not even return to the said State more than a few times and then only for short visits.

In September, 1876, he bought a burial lot in the District of Columbia, and had his deceased wife buried therein.

quest his body was also interred in said lot.

Early in the year of 1885 he purchased a lot in the city of Washington and erected a dwelling at a cost of \$35,000. In this house he lived until his death, and his daughter Isabel made said house

her home after his death by permission of defendants.

In pursuance of his intention to make the city of Washington his home William A. Richardson soon began to close out his investments in the State of Massachusetts, and invested all of his money in the city of Washington, principally in real estate securities. the time of his death he had no property whatever in said State, except one or two parcels of unproductive real estate of trifling value. At the time of his death he was seized of considerable real estate in the District of Columbia, and possessed of personal estate, consisting principally of loans on real estate security in said city, aggregating upwards of \$300,000. That notwithstanding these facts, the defendants as executors of said will, yielding to a recital at the commencement thereof to the effect that the testator was a "citizen and inhabitant of Cambridge, in the County of Middlesex, in the Commonwealth of Mass.," caused the said will to be filed for record and probated in one of the probate courts in said county

Complainants charged that the said Court of Probate was without jurisdiction in the premises, and has not and can not have any anthority or control whatever over the said estate. They fear that unless they are protected in their rights they will be subjected to inheritance and other taxes and dues in said State, although their said grandfather, William A. Richardson, had many years before established his permanent residence and home in the District of Columbia.

That under and by virtue of the powers and authority in said will contained, the defendants, as executors thereof and trustees thereunder, will have full and absolute control over said property and estate until the plaintiffs attain the age of 23 and 26 years, and that they will receive and disburse large sums of money for the objects and purposes in the said will specified. Complainants believe they are entitled to have defendants account in this court for all the property and estate passing under said will, from time to time and as often as may be necessary, and that such an accounting will be a protection to the defendants in the execution of their trust.

Complainants further believe that the said George F. Richardson has filed in the Probate Court of Middlesex County, Massachusetts, his resignation, both as executor and trustee under the will.

Prayers of the bill are: That the will and testament of said William A. Richardson may be construed and the rights of these plaintiffs thereunder ascertained and fixed by a decree of this honorable court.

That an account may be taken of all the property and estate which have been received by the defendants as executors and trustees under said will, and which, without wilful default, they might have received since they qualified as such executors, without abatement for charges or taxes claimed by the State of Massachusetts.

That the said executors be required from time to time to file accounts and as often as may be necessary, showing what moneys they have received and the disposition thereof.

That if it be true that the said George F. Richardson has filed his resignation as executor, and refuses and declines further to act as such, some fit and proper person may be appointed in his place and stead, to carry out the wishes and intent of said testator as set forth in his last will.

An amended bill was filed March 6, 1899. It was averred that since the death of the testator several deeds of trust intended to secure the payment of certain notes belonging to his estate have been foreclosed and the real estate by them secured bought in by defendants for and on account of said estate, upon which taxes are now charged in the District and paid out of the estate of said deceased.

The defendant Drury answered the bill admitting the general facts alleged therein. He averred that many years prior to the death of the testator, defendant, with one John T. Arms, had charge of the investment of the money of the testator. A large part of it was invested in what are called second trust notes. During the year 1893, the business depression produced a material decrease in real estate values in said District, which has since continued. In consequence of this depression and decrease many parcels of real estate given as security for the payment of said notes have been sold since the death of said deceased, at public auction, and bought in for the account of the estate to save it from loss. Some fifteen

or twenty different parcels have been sold and bought in with the result that many thousands of dollars of personal property have been thereby converted into real estate, which is taxable only in

said District

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That before his death the testator deposited his last will with him, this defendant. That said George F. Richardson, a resident of Massachusetts and a brother of the deceased, came on to attend the funeral. After the services, the will was handed to said George F. Richardson, who then stated that it was his deceased brother's wish that his will should be probated in Massachusetts and his estate there administered. The defendant interposed no objection to said procedure and consented to said probate and administration, not being then advised that there was any question of jurisdiction of the Massachusetts court to admit said will to probate, and relying in that behalf upon his coexecutor, the said George F. Richardson, who was a lawyer of learning in that State.

Defendant admitted that George F. Richardson is not undertaking to manage or control the estate of said deceased, or in any way to interfere with the management of this defendant. admits that he has had the entire care, custody, and management of said estate since the will was probated, and is responsible for all the money paid out and expended, and now has in his possession all the personal assets of the estate. The defendant is willing to account in this court or in any other court having jurisdiction for all the moneys and other property received by him and to hereafter

account from time to time.

On April 1, 1899, an order was entered appointing Samuel A. Drury and Samuel Maddox trustees to perform the trust created and to receive from the executors all the property whereof the deceased died siezed and possessed. Said trustees were required to give bond each in the sum of \$25,000.

On October 18, 1899, the court entered an order referring to the auditor to return the amount and character of the estate whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of said

The report of the then auditor, James G. Payne, was filed December 19, 1900, and attached thereto are schedules setting forth items of personal property and real estate. The trustees are charged with the personal estate received from the executors, amounting to Among the credits allowed are commissions to the executors, allowed by the Probate Court of Massachusetts, \$18,800. After deducting this and other items of expenditure, etc., they are charged with \$221,942.47. A special account is rendered of the Eliza C. Magruder trust, a trust fund in the hands of the testator. to the administration of which the present trustees succeeded. appears that four other successive yearly reports were made of the administration, but the same are not set out in the record.

January 15, 1909, an order was made referring the case to the auditor to state the account of the trustees to January 17, 1909.

Owing to the death of Auditor Payne, no report was made.

On June 16, 1909, Alexander R. Magruder and Isabel R. Magruder filed a petition in said cause in which they set forth the clause of the will directing payment to the said complainants of one-half of the fund upon the attainment of the age of 23, and the remainder at the age of 26 years. It was alleged that Isabel R. Magruder. the daughter of the testator, died April 4, 1898, leaving surviving her the petitioners. It sets out the decree of April 1, 1899, appointing Samuel A. Drury and Samuel Maddox trustees. It is alleged that on the petition of Drury and Richardson under the will, the same had been admitted to probate in the county of Middlesex, Massachusetts and that on April 11, 1899, the said court had ordered Drury and Richardson to pay over said property of said estate to the said Drury and Maddox, trustees as aforesaid. Afterwards, on April 25, 1899, said executors filed in said Probate Court their first and final account, which was approved by said court. A copy of the inventory filed in the Probate Court is attached as an exhibit to the petition.

It is further alleged that one of the petitioners, Alexander R. Magruder, when he became of age, made application to the court to be appointed a cotrustee with the said Samuel A. Drury, and Samuel Maddox, and by order he was duly appointed to act in connection with said Drury and Maddox as a trustee, and gave bond as was required by said decree. But since the receipt by the trustee of the property transferred and delivered to them by the order of the said Probate Court of Middlesex County, Massachusetts on the 25th day of April, 1898, said trustees, Drury and Maddox, have had the possession, management and control of the assets and property of said The petitioner, Alexander R. Magruder, has had no active participation in the management thereof, nor in the execution of the aforesaid trusts. That said trustees have from time to time filed their accounts in this court—five in number—which have been referred to the auditor and passed by him. There is now before the auditor their sixth account, which is under consideration.

Alexander R. Magruder attained the age of 23 years on the 17th of January, 1906, and under the terms of the said will became entitled to receive from said trustee- and to have and hold in his own right, one-fourth part of the assets of said estate, but he made no request therefor and allowed the same to remain in the custody of said trustees.

The petitioner, Alexander R. Magruder, attained the age of 26 years on the 17th day of January, 1909, and then became entitled under the terms of the aforesaid will to have turned over to him one-half of said estate and of all the property and funds constituting the same, and he thereupon and before said 17th day of January notified said trustees in writing that he desired to have his proportion of said estate at once transferred and conveyed to him.

The petitioner, Isabel R. Magruder, attained the age of 23 on the 20th day of April. 1909, and thereupon became entitled under said will to have turned over to her one-quarter of the said estate, and of all the property and funds constituting the same and notified said trustees in writing, before the 20th day of Λpril, 1909, that she

desired to have her proportion or part of said estate at once turned

over, transferred and conveyed to her.

The said trustees, Samuel A. Drury and Samuel Maddox, have made and presented to the petitioners a paper writing headed, "A list of assets comprising estate of William A. Richardson, deceased, in possession of Samuel A. Drury and Samuel Maddox, trustees, January 17th, 1909," which is hereto attached and marked Exhibit "C." In said statement or schedule are notes supposed to be good and well secured; real estate, the title of which is supposed to be good; stocks, supposed to be good; property to be held jointly by Alexander R.

and Isabel R. Magruder.

Petitioner caused Messrs. Baker and Addison to make a valuation of each item of said property, and to present a plan of division between petitioners. Acting upon the advice of Messrs. Baker and Addison and with the approval of said trustees subject to the approval of this court, the petitioners have agreed upon and elected to make a distribution of the property in said statement. R. Magruder is to have turned over to him all the notes and pieces of ground and stocks described and enumerated in said allotment B. Under the terms of said will all the notes described in said allotment A and also the pieces and parcels of land therein described are to be held in trust. This is estimated to be one-fourth of the said trust estate.

The said petitioner Isabel R. Magruder is to have turned over and conveyed to her, all the other pieces and parcels of land and properties described in the said exhibit B under the heading allotment A.

Several other items of property are to be held jointly by her and

Alexander R. Magruder, as tenants in common.

Petitioners are informed that said trustees are willing and prepared to turn over and convey the said properties as herein indicated and provided and to resign from and be divested of the trusts, powers and title, imposed and vested in them under the said will and the aforesaid order of this court, so far as the same relate to and affect the notes and the said two pieces or parcels of land aforesaid, and that the American Security and Trust Company may be substituted in their place and stead as trustee to hold and execute said trust in respect of said remaining notes and parcels of land in accordance with the requirements of the said will and testament.

The petitioner Isabel R. Magruder, by an indenture of this date, has conveyed to the American Security and Trust Company, trustee, in trust and upon the trust therein set forth all her right, title and interest in and to all the properties described in said allotment A.

Wherefore the petitioners pray: That the said trustees Drury and Maddox and Alexander R. Magruder may be authorized and directed to set over, assign, transfer, convey, and deliver to the said Alexander R. Magruder, by proper endorsement and conveyances, all the trust funds and property described in said exhibit B, under the heading of allotment B.

That the American Security and Trust Company may by this court be appointed trustee in the place and instead of the Samuel A. Drury and Samuel Maddox and Alexander R. Magruder in respect

of and for the said notes described in exhibit B, under the heading allotment A, to be held in trust under said will for the said Isabel R. Magruder. That the said trustee may be directed to convey and deliver to Isabel R. Magruder all the property described in said allotment, except the property hereinabove last described, and that the trustees be authorized to turn over to the petitioners as tenants in common all the notes, properties and real estate described in said allotment to be held jointly. That the cause be retained in this court for the purpose of having stated and settled the accounts of said trustees.

On July 9, 1909, the court entered a decree on said petition, granting the prayers thereof and directing the trustees to make conveyance and disposition of the property in accordance with the prayers. February 3, 1910, the former order not having been carried out, the court made another order directing that the cause be now referred to the auditor to state the final account of the trustees, and the distribution of the estate in their hands, and to report such commission or compensation, as may be appropriate and proper; also to state the account of the said trustees in respect of what is known as the Eliza C. Magruder trust.

March 16, 1910, a report of the audite was filed and it is on the exceptions to several items of that report on which the decree was

entered that this appeal has been prosecuted.

In regard to the item of \$18,800 allowed to the executors by the Probate Court of Massachusetts, to which objection was made by the petitioners, the auditor stated that this item had been included in the report of his predecessors heretofore referred to and made December 19, 1910, which was confirmed, and he had no authority to reopen the account therein without specific direction of the court; and further stated that the allowance having been made in the Probate Court of Massachusetts could not be reviewed in this court.

Respecting the objection of the allowance of commissions for the collection of rents in the third, fourth, and fifth reports of the auditor, the same conclusion with respect to his authority to sur-

charge the previous account of the auditor was renewed.

As regards the allowance of the trustee of 5 per cent commission on the principal and 10 per cent commission on the income of the trust estate, the report reviews at length the nature and character of the services performed. It states that the bulk of personal property consisted of notes for small sums, many of them payable monthly. He says that the transactions with respect to these notes were almost innumerable. The total number of the same approximating 3,000.

As regards real estate, he reports that the trustees collected the rents, looked after repairs, and kept the property insured. That they have paid off thirty-three trusts aggregating over \$100,000, including the trust upon the homestead; acquired twenty-four parcels by foreclosure and one parcel by deed without foreclosure; sold sixteen parcels and two party walls; bought four parcels; secured the cancellation of taxes and perfected the title to one parcel; all of these transactions involving great responsibility and extensive services on

the part of the trustees. The trustees have given the services of a trained and experienced business man in real estate matters, and a trained and experienced member of this bar during these years in the execution of this trust, services which have been highly creditable to them and beneficial to the estate in every respect. He states that they are well entitled to the 5 per cent commission on the principal, and the 10 per cent on the income, and the same was allowed. In respect to the objection based on certain profits alleged to have been made by Arms and Drury, of which partnership the trustee Drury was a member, he reports that no profits were made by trustees in said transaction. It appeared that they had from time to time. in making investments of the funds of the estate, purchased certain notes of Arms and Drury, which said notes were secured by trusts upon real estate, and were in the nature of builder's loans. represented advances made by Arms and Drury, and from which in making the loans the said firm realized from 1 to 2 per cent commission. He found that Arms and Drury, out of their own money, made loans secured by these notes and received from the borrowers the customary commission of 1 and 2 per cent.

The report denied the claim of Alexander R. Magruder to any share of the allowance made to the trustees Drury and Maddox, because, as heretofore shown, Magruder, though appointed an additional trustee, never took any part in the management of the estate or the execution of the trust, and as a matter of fact has not resided

in Washington since his appointment.

The report is accompanied with schedules showing several items of account and property distributed to the beneficiaries of the trusts; also separate schedule of the administration of the Eliza C. Magruder

It appears from the report that the testator died possessed of 3,040 promissory notes, 118 secured by first deed of trust; 2,055 secured by second deed of trust; 322 partially secured; 487 security worthless; 58 of doubtful value. That during the period of the auditor's first report 849 collections had been made on the principal of notes amounting to \$127,467,81; 937 collections of interest on notes amounting to \$13,939,99; reinvestments in the purchase of 49 notes, \$74,307,40. Reinvested by paying off trusts on real estate \$28,816.57.

During the period of the auditor's second report 428 collections of principal amounting to \$54,893.10 were made; 1,105 payments of inferest on notes amounting to \$20,046,99; collection from the sale of three parts of the real estate, \$12,004.83; reinvested in the purchase of 51 notes aggregating \$33,776; reinvested by paying off trusts of thirteen pieces of real estate \$35,513,08; reinvested in the purchase of two parcels of real estate, \$20,450,13.

During the period of the auditor's third report 360 collections on the principal of notes amounting to \$60,384,68 were made; 716 collections of interest on notes amounting to \$17,589,20; collections from five parcels of real estate, \$20,200; reinvested in the purchase of 40 notes, \$17,240; reinvested by paying off ten trusts upon real

estate, \$51,659,54,

During the period of the auditor's fourth report 75 collections on the principal of notes, \$23,568 were made; 281 collections of the interest on notes, \$10,733.49; five sales of real estate, \$17,939.59; reinvested in the purchase of 14 notes, \$15,000; reinvested by paying off two trusts on real estate, \$18,000.

During the period of the auditor's fifth report, 121 collections of the principal of notes, \$29,293; 248 collections of the interest of notes, \$11,250.60; collected from the sales of three parcels of real estate, \$8,930.42; reinvested in the purchase of ten notes, \$35,150; reinvested by paying off one trust on real estate, \$6,000; reinvested in the purchase of one parcel of real estate, \$150.

The following general summary of the five reports of the auditor is given, as follow::

Collected from principal of notes in 1,833 payments	\$295,705 59
Collected interest on notes in 3,287 payments	72,560 27
Collected from fifteen sales of real estate	58,074 84

Total collections	from all	three	sources	. \$426,340 70

#### Reinvestments.

In the purchase of 164 notes	\$175,473 40
In paying off 43 trust notes	139,989 19
In the purchase of three parcels of real estate	20,600 13

Total reinvestments	 \$336,062 72

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Besides these there were many other transactions in real estate which were acquired under foreclosure sales or direct deeds from the owner where foreclosures had been had or the deeds obtained on account of second trust indebtedness.

In the record there appears a certified copy of the proceeding in the Probate Court of Middlesex County, Massachusetts. The first among these is an order dated February 16, 1897, appointing appraisers of said estate. Among the items therein scheduled are notes secured on real estate in the District of Columbia amounting to \$216,755.05. Notes payable monthly secured by second deed of trust in Washington, D. C., \$76,961. Notes partially secured, \$9,750. Doubtful notes amounting to \$5,995. Notes considered as of no value, \$32,619.78.

The real estate appraised consisted of lands in the District of Columbia, Massachusetts, Missouri, and Colorado.

Next follows the petition filed April 4, 1899, by Richardson and Drury, executors, representing the probate of the will of the deceased and the acceptance by the executors of the trust imposed It set out that since the granting of said letters there had been no personal property of the estate of the testator in the Commonwealth of Massachusetts; that since the granting of letters testamentary Isabel R. Magruder, the only surviving heir, has deceased, and sets out the interest of her surviving children by the terms of the will. That they are the only parties interested as beneficiaries of the trust

at the time of the probate of the will, and they have since resided in the District of Columbia. That Samuel A. Drury and Samuel Maddox have been appointed by the equity court of the District of Columbia to administer the trusts created by said will, ander F. Magruder has been appointed by said court guardian of said minors and has duly accepted said trust.

William A. Richardson at the time of his decease was not a resident of the State of Massachusetts, but was a resident of the said Washington, and that all the parties interested under the trust in said will lived in the District of Columbia and that said will should not have been probated in said Probate Court, but should have been

probated in the District of Columbia,

Wherefore your petitioners, without waiving their rights as to the jurisdiction of this court to probate said will, but insisting that the same was probated in this court by accident and mistake and should have been probated at said Washington, pray that they may be authorized to pay over said trust funds to said trustees appointed in said Supreme Court of the District of Columbia as aforesaid, and that upon such payment they may be discharged from further responsibility by decree of this court.

Alexander F. Magruder, of the District of Columbia, reciting himself as the duly appointed guardian of Alexander R. Magruder and Isabel R. Magruder, endorsed said petition and signified his consent to the granting of the above petition and requested that said authority be given the executors to pay over the trust funds in their hands to the trustees appointed by the Supreme Court of the District

of Columbia.

The petition came on to be heard and it was decreed that the said executors be and are hereby authorized and directed to pay over said trust fund to the said Maddox and Drury, trustees, ecutors were ordered to present an account of their administration of the estate for the period beginning with the 24th of November, 1896, and ending with the 24th of April, 1899. They filed an account charging themselves with the several items received as stated in the schedule aggregating \$415,458,37. The items therein are set out in Schedule A. In Schedule B appears the list of the payments, charges, losses, and distributions of the property turned over to the trustees, amounting in the aggregate to \$415,458,37. This was accompanied by a receipt of Maddox and Drury, trustees, of the items stated in the account as turned over to them.

One general item in Schedule B is as follows: The expenses of administration, including the care of property, the payment of debts, the collection of notes amounting to \$226,607.54; investment of interest notes, \$166,958,21; the collection from interest and other sources, \$58,168,94; the payment of about \$50,000 for repairs on real estate, including also the payment of moneys to Isabel R. Magruder and Alexander R. Magruder, counsel fees in Massachusetts and in

Washington, etc., \$18,800.

It appears that during the administration of the estate in Massachusetts that Commonwealth levied taxes upon the personal property for two years, 1897 and 1898, amounting to about \$7,500 per year. Collection of these taxes was resisted by the executors on the ground that the property was in the District of Columbia, and, therefore, not subject to taxation in Massachusetts. In that litigation the executors were represented by Samuel Maddox and the Hon. William H. Moody, then a member of the bar of Massachusetts. The fees of counsel were paid by Drury out of the item allowed for expenses, the said Richardson declining to accept any part thereof. The litigation terminated in favor of the estate, after the settlement of the account.

In reporting a settlement of this final account, the auditor charged the trustees with all the commissions received by them under the for-

mer annual reports.

A number of exceptions were entered to said report. Those that have been relied on relate to the allowance of the 5 per cent. commission on principal and 10 per cent on income; to the \$18,800 item allowed by the Massachusetts court; and to alleged profits made by the trustees in the purchase of notes for reinvestment.

The exceptions were all overruled, the report confirmed, and the trustee ordered to turn over the funds of the trust to the beneficiaries, and, in part, to a substituted trustee, and to be finally discharged on

filing proper vouchers and receipts.

The first exception to the auditor's report is to the allowance to the trustees of 5 per cent commissions on the principal, and 10 per cent on the income of the estate. There is no statute in the District regulating the compensation of trustees, and the matter of allowance therefor is within the sound discretion of the equity court. prevailing in the United States in this respect is different from the rule governing in England. Here, "it is considered just and reasonable that a trustee should receive a fair compensation for his services; and in most cases it is gauged by a certain percentage on the amount of the estate." Barney v. Saunders, 16 How., 535-542. The commissions allowed in that case were 5 per cent on principal and 10 per cent on income. Discussing the rate, Mr. Justice Grier said: "The allowances as made by the auditor in this case are, we believe, such as are customary in Maryland and this District, where the trustee has performed his duty with honor and integrity." commissions allowed in this case being within the power of the auditor, it was his duty to determine from the evidence before him regarding the character of the services performed by the trustees what would be a reasonable and fair compensation therefor. It is a wellestablished doctrine that the report of an auditor, that has been confirmed, should be permitted to stand unless there is some obvious error or mistake therein. Richardson v. Van Auken, 5 App. D. C., 209-218; Grafton v. Paine, 7 App. D. C., —; Smith v. Trust Co., 12 App. D. C., 192-198; Hutchins v. Munn, 28 App. D. C., 271-279; S. C., 209 U. S., 246-250; France v. Coleman, 29 App. D. C., 286-293.

It appears that it had been the practice of the testator for some years before his death to invest his money in loans of comparatively small amounts, secured by second mortgages on real estate in the District of Columbia. Many of the notes were payable monthly.

At the time of his decease these investment notes constituted the larger part of his entire estate and the bulk of his personalty. In the first report of the former auditor, in 1900, to which no exception seems to have been taken, he allowed the trustees 10 per cent commission upon the income of the estate. The grounds upon which

this allowance was made were thus stated in the report:

"These collections and their disbursement form but a part of the service imposed upon these trustees and a much smaller part of their responsibility. I have taken into consideration the magnitude of the principal, personal estate, and its shifting character as illustrated by the conversion of more than one-half of the promissory notes into money during the period of this account and the reinvestment of the funds in other safe, interest-bearing securities as well as the discharge of nearly thirty thousand dollars of liens upon the real estate. The compensation allowed in this report is less than the value of the service, but no more is claimed by the trustees."

Like reasons were assigned by the auditor in the report under con-

ideration.

Without consuming time with the review of the evidence relating to the administration of the trust, we think it sufficient to say that while the allowance was a liberal one, it is not obviously excessive, nor has it been shown to be founded on a mistake that, under the rule before stated, would justify the setting aside of the report on

the exception taken

2. The next exception relates to the item of \$18,800 allowed in the settlement of the final account of the executors by the Probate Court of Massachusetts. This amount is scheduled in the first report of the auditor returned December 17, 1900, as deducted from the trust estate charged to the trustees. In other words, they were in effect charged with the net balance shown by that account as received from the executors. In the final report the auditor expressed the opinion that he had no power under the reference to reopen the account settled by his predecessor. Another ground assigned was that the equity court had no power to inquire into or set aside the settlement made by the Probate Court. This report was based on the consideration that the administration and the responsibility of the trustees, under the appointment of that court, extended only to the net balance ordered to be delivered to them by the Probate Court.

Appellants contend that the Probate Court of Massachusetts had no jurisdiction to probate the will because the testator was domiciled in the District of Columbia; that its proceedings are void, and that the trustees are chargeable with the entire estate as it existed on April 1, 1899, when the decree appointing the trustees was entered. It appeared that the testator had some real estate in Middlesex County, Massachusetts, and this gave jurisdiction to its court to probate the will and, at least, to administer such of the estate as was in that State. A prima facie ground of jurisdiction was afforded by the recital in the will that the testator was both a citizen and an inhabitant of Massachusetts, which fact the executors confirmed by offering the will for probate. Whether this is a collateral attack on the judgment of this court which will not be entertained (see R. R.

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Co. v. Gorman, 7 App. D. C., 91-106), is a question that does not necessarily arise. However that may be, the adjudication of domicile was not conclusive of that fact in a proper proceeding in the courts of the District of Columbia, or of their right to administer such of the estate as was actually within their jurisdiction. v. Gordon, 13 App. D. C., 392-413; S. C., 177 U. S., 214-227. were no creditors in the District, and the only persons interested were the child and grandchildren of the testator for whose benefit the trust was created. No offer was ever made to probate the will in the District of Columbia, which was necessary to confer power on the executors to administer the estate therein. The only source of their authority was the order of the Massachusetts court admitting the will to probate and issuing the letters testamentary which they re-They submitted the entire personal estate (consisting chiefly of loans evidenced by notes and secured by mortgages in the District) to the appraisers appointed by that court, and administered the same under its authority from the date of probate-October, 1896-until delivered to the trustees appointed by the decree of the equity court in April, 1899. Whether this voluntary submission by the executors of the personal estate in their actual possession, which was acquiesced in by the adult beneficiary and the guardian of the infant beneficiaries, to the administration of the Massachusetts court, constituted such an actual removal of the same to that State so as to bring it under the complete jurisdiction of that court, suggests another question that we need not decide. is no conflict of jurisdiction between the probate courts of the two jurisdictions, for, as we have seen, there has never been an attempt to probate the will in this District. It is to be remembered that the immediate purpose of filing the bill to procure administration of the trust was to escape from taxation in the State of Massachusetts for the new taxing year about to begin. The allegations of the bill that testator was domiciled in the District, that his personal estate was situated there, and that the Probate Court of Massachusetts had no jurisdiction to probate the will and administer the estate, were in line with the main purpose and contentions in the pending suits in that State for the taxes of the two preceding years. There was no denial of these allegations by the executor Drury, who was the only defendant before the court. The reason assigned by him for the probate was that immediately after the burial of the deceased he delivered the will to George F. Richardson, a brother of testator and one of the executors nominated by him, who stated that it was testator's wish that his will should be probated in Massachusetts. Defendant consented thereto, not being advised that there was any question of jurisdiction, and relying in that behalf upon the said Richardson, who was a lawyer of learning and distinction in that Assuming it to be true, as alleged, that said George F. Richardson had declined to act as trustee of the estate, he consented to the appointment of another in his stead. No attack was made in the bill upon the administration of the estate for the intervening period. The prayers were that the will may be construed and the rights of plaintiffs thereunder ascertained; that an account be taken

of all the property and assets which have been received by the defendant Drury, as "executor and trustee," under the will, since he qualified as such executor, without abatement for assessments and taxes claimed by the State of Massachusetts; that defendant as "executor and trustee," be required to file accounts from time to time; that some fit person be appointed instead of George F. Richardson to carry out the trusts created by said will; and that defendant be restrained, in the meantime, from paying out any money in his hands for dues and taxes to the State of Massachusetts. The restraining order was at once issued. The decree rendered thereon continued the restraining order. It then recited that the testator was last domiciled in the District of Columbia, that the beneficiaries are there domiciled also, and then appointed Drury and Maddox trustees to perform the trusts created by said will, empowering them to receive from "the executors named in said will all of the property whereof the said deceased died seized and possessed." No express adjudicanon was made as to the jurisdiction of the Massachusetts court or as to the acts of the executors in offering the will for probate there, and subjecting the personal property to appraisement and administration That there was no such intended adjudication was the construction put upon it by all of the parties interested. The then appointed substitute trustee, Maddox, had filed the bill as solicitor for the plaintiffs. Within the month thereafter Drury and Richardson, as executors, filed an account in the Probate Court showing their administration of the estate. Their petition recited the facts concerning the probate of the will, the interests of beneficiaries, and the decree of the equity court aforesaid appointing trustees. It further stated that at the time of his decease the testator was not domiciled in Massachusetts and that his will, instead of being probated in Massuchusetts, should have been probated in the District of Columbia; and that the probate was the result of mistake. They prayed an order authorizing them to deliver the trust funds in their hands to the said trustees, and that they be discharged from further responsibility. The account rendered, among other items of credit for collections, payments, etc., contained the item for expenses of administration, aggregating \$18,800, that is now in ques-An endorsement on said account to the effect that the same had been examined, and was requested to be allowed without further notice, was signed by the then infant beneficiaries, by their guardian Alexander F. Magruder, who was also their father, and by Maddox and Drury, trustees. Drury, it is true, was approving his own account, but Maddox had no special concern therein, save as representing the beneficiaries. The court entered an order approving the account, and directing the executors to deliver the estate to the trustees. On the back of this account Maddox and Drury, trustees, executed a receipt to the executors for the items of cash, and other personal property shown by the account to be in the hands of the executors. Thereafter, on October 18, 1899, the order was made by the equity court requiring the auditor to report the amount and character of the estate of which the testator died seized and possessed, and to state

the account of the executor and trustees under the will of the deceased.

The auditor's report, heretofore referred to as made December 19, 1900, returned an account showing the credit made by the Massachusetts court, and charging the trustees with the balance shown by that account. No exception was made to this report, and it stood confirmed under the rules of the court. Four other reports were made, and no exception was taken to the recognition of the old account as the basis of the liability of the trustees. No attack was made upon the settlement of the account in Massachusetts, and no complaint made that the trustees were responsible for the entire estate of the testator, without diminution to the extent of the allowances made to the executors in the settlement of their account by the Probate Court.

It is to be noted, too, that the active administration of the estate had been in the hands of the executors for more than two years prior to the settlement of this account. Many collections of debts had been made and many reinvestments of money. The real estate was also being looked after, taxes were paid, and litigation had been maintained with the State of Massachusetts on her claim for taxes for the years 1897 and 1898-litigation that finally ended in favor of the executors after the settlement of this account. While it is contended that under the decree of the equity court the executors were required to turn over all of the estate of which the testator died seized and possessed, and that the trustees became responsible therefor, all of the credits allowed in the account were accepted as determining the amount for which the trustees should be held to account. save and except the item of \$18,800 allowed them for expenses of administration. The first objection made to this item, as we have seen, was in the exceptions to this final report and settlement,

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In this connection another point suggests itself as entering into the consideration. Under the law in force when the testator died there was no provision for the probate of a will as to real estate, in this jurisdiction; but wills of personalty were authorized and required to The equity court had no jurisdiction to probate a will, be probated. and to establish and enforce one as to personalty. Whatever may be the latitude of the rights and powers of executors of unprobated wills, by the rules of the common law, or whatever may be the limitations thereof resulting from our probate statutes, it is quite certain that they had no power to administer a trust of personal property created by will, without its probate in due form. As there was no probate in the District the authority of the executors necessarily rested in the probate and letters testamentary of the Massachusetts court; and it was as such executors that they were brought before the court and directed to deliver the property to the trustees appointed to administer the trusts in that will. The conditions recited, and the acquiescence of all parties at interest, in the proceedings and orders of the Massachusetts Court are sufficient, in our opinion, to estop them now to impeach the settlement made by that court of the accounts of the executors, and of the balance required to be delivered to the trustees. We think the auditor and the court were right,

therefore, in refusing to review that account, reject the allowance therein made, and charge the item to the trustees as part of the trust

fund received by them.

This disposes also of the contention that this allowance for expenses of administration should have been considered as an element of the amount of compensation allowed to the trustees in the final settlement, the basis of which was the net balance received by them from the executors as shown in the Massachusetts settlement. No credit was made them or to Drury for services prior to the commencement of administration under the appointment of the equity court of this District.

3. The only attack made upon the fairness of the administration of the trustees occurs under the exception to the auditor's report on the ground that he failed to ascertain and charge the trustees, as he should have done, with certain profits alleged to have been realized by them in the purchase of certain notes for reinvestment of the

trust funds.

The facts upon which the contention is founded are these: That Drury was a member of the partnership of Arms and Drury, and that for the purpose of reinvesting the funds of the trust, the trustees purchased many notes, aggregating large sums, from said partnership. The evidence shows that these purchases were made at par with any accrued interest, that the notes were good and nothing had ever been lost on them. It appears that Arms and Drury had been engaged, as part of their real estate business, in lending money of their own to parties engaged in building houses, taking notes therefor secured by building contracts and mortgages. Upon these loans they made a profit varying from 1 to 2 per cent. No money of the trust was used in such loans. The profits of Arms and Drury from the transaction were derived from the original borrowers. profits were made in selling the notes, which were all well secured, to the trustees, and the latter took them at their face value, obtaining

no profit therefrom.

It is true that a trustee should not deal with himself, and in any transaction with the trust fund in which he has made a loss by such dealings, he should be held to the strickest account. If, on the other hand, he realized profits he should be made to account fully for them. No principal is better settled than that a trustee shall not make a personal profit from the use of trust funds. We would not be understood as qualifying this salutary rule in the slightest degree; but we can not perceive that it applies here. Grant that it would have been better for Drury not to make purchases for reinvestment from a partnership of which he was a member, and thereby avoid opportunity for criticism; yet it is clear that the notes were bought at their face and actual value, that no profit was made by the trustees, and that not a dollar was lost to the estate. Drury knew the character of the notes, and there was less trouble and expense in the investigation of titles than there would have been in the purchase of similar securities from others; nor does it appear that like securities could have been readily obtained from others. Moreover, the other trustee. Maddox, had no connection with the partnership of Arms and Drury,

He was entirely disinterested and there is no complaint against him other than that he concurred in the purchase of the securities. 1

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Should the trustees jointly, or Drury singly, be charged in the settlement of their final account with any profit that Drury may have realized, as a member of the partnership of Arms and Drury, from the original loans of the money of that firm, which formed the basis of the notes, subsequently purchased in good faith by the trustees

for the reinvestment of the trust funds?

The trustees lost nothing on the notes and charged themselves with the exact amount paid for each. They paid no more than they would have done in the purchase of like notes from other persons engaged in the same business as Arms and Drury, which persons would have realized a similar profit from their borrowers. not think that Drury, under any principle of equity, can be called on to surrender to his beneficiaries his profit made in previous transactions with other persons and at their expense, simply because he and his cotrustee subsequently purchased the paper in the securing of which those profits had been made, and in which purchases no profit was made, or expected to be made, at the expense of the estate. Dealings with the partnership of Arms and Drury by trustees, one of whom was a member of the partnership, call for the closest scruting of each and every such transaction, but when that scrutiny has disclosed no actual wrongdoing, no advantage taken of the situation no profits made and no possible injury to the interests of the beneficiary. there is nothing calling for restoration by the supervising court. A pecuniary charge therefor in the settlement of the account would. under such circumstances, not be a restoration, but could be in-

flicted only by way of fine and punishment.

4. The last assignment of error relates to the decree of the court which provides that when the trustees shall file vouchers showing the distribution and final disposition by them of the trust funds in their hands or shown by the auditor's report, they shall be and are hereby discharged of and from their said office of trustees under their said appointment by the court in this cause. Upon the confirmation of the auditor's report this was the proper decree to be entered. The objection to it, however, is that it also discharges them as trustees of what is known as the Eliza C. Magruder trust. It appears that, prior to his decease, the testator had executed an acknowledgment of a trust in certain property in his hands, consisting of stocks, and of real estate in the District of Columbia, and the State of Missouri, for the benefit of Eliza C. Magruder, the beneficial estate to go at her death to the children of Alexander F. Magruder, who are the plaintiffs in this proceeding. By the decree of April 16. 1899. Maddox and Drury were also appointed trustees of this trust. Separate accounts of the administration of that trust have always been kept and reported. The account was before the auditor in this reference and he settled the same separately. No exception was taken to that part of his report. It is evident that the court in entering the decree did not intend then and there to terminate the administration of that trust, but the form of the decree may be objectionable as warranting the construction given it by the appellants.

The case has not been finally closed in the equity court, and its power to correct the decree in that respect is fully recognized.

So far as the decree confirms the auditor's report of the account of the trustees of the administration of the trusts created by the will, it is affirmed with costs. So far as the Eliza C. Magruder trust is concerned the cause will be remanded with leave and direction to the court to amend the decree in so far as it may relate thereto, and take such final action regarding that trust estate as may be expedient and proper.

Affirmed.

Monday. December 4th. A. D. 1911.

October Term, 1911.

No. 2265

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,

Samuel A. Drury and Samuel Maddox, Trustees,

Appeal from the Supreme Court of the District of Columbia,

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause in so far as it confirms the Auditor's report of the account of the Trustees of the administration of the trusts created by the will, be and the same is hereby affirmed with costs; so far as the Eliza C. Magruder trust is concerned the cause will be remanded with leave and direction to the Court to amend the decree in so far as it may relate thereto, and take such final action regarding that trust estate as may be expedient and proper.

Per Mr. Chief Justice SHEPARD, December 4, 1911.

Court of Appeals, District of Columbia,

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants,

Samuel A. Drury and Samuel Maddox, Trustees.

Now come the appellants in the above entitled cause, by Nath'l Wilson, their counsel, and move the Court to allow them an appeal to the Supreme Court of the United States from the decree entered herein on the fourth day of December, 1911, and to fix the penalty of the bond for costs on said appeal.

NATH'L WILSON, Counsel for Appellant. (Endorsed:) No. 2265. Alexander R. Magruder, et al., Appellants, vs. Samuel A. Drury, et al. Petition for allowance of appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 21, 1911. Henry W. Hodges, Clerk.

THURSDAY, December 21st, A. D. 1911.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants, vs.

SAMUEL A. DRURY and SAMUEL MADDOX, Trustees.

On motion of Mr. Nathaniel Wilson, of counsel for the appellants in the above entitled cause, It is ordered by the Court that said appellants be allowed an appeal to the Supreme Court of the United States and the bond for costs is fixed at the sum of three hundred dollars.

## (Bond on Appeal.)

Know all Men by these Presents, That we, Alexander R. Magruder and Isabel R. Magruder, as pincipals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Samuel A. Drury and Samuel Maddox, Trustees in the full and just sum of three hundred dollars, to be paid to the said Samuel A. Drury and Samuel Maddox, Trustees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-first day of December, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Alexander R. Magruder and Isabel R. Magruder, as appellants, and Samuel A. Drury and Samuel Maddox, Trustees, as appellees, a decree was rendered against the said Alexander R. Magruder and Isabel R. Magruder and the said Alexander R. Magruder and Isabel R. Magruder having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Samuel A. Drury and Samuel Maddox, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such. That if the said Alexander R. Magruder and Isabel R. Magruder shall prosecute said appeal to effect, and answer all costs if they fail to make

their plea good, then the above obligation to be void; else to remain in full force and virtue.

ALEXANDER R. MAGRUDER, By NATH'L WILSON,

SEAL.

His Attorney in Fact.
ISABEL R. MAGRUDER,

[SEAL,]

By NATH'L WILSON,

Her Attorney in Fact.

FIDELITY AND DEPOSIT COMPANY

OF MARYLAND, By H. B. HODGE,

Attorney in Fact.

[Seal of Fidelity and Deposit Co. of Maryland.]

Sealed and delivered in presence of— E. L. WHITE.

Approved by-

SETH SHEPARD,

Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 2265. Alexander R. Magruder et al., Appellants, vs. Samuel A. Drury et al. Bond for costs on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 22, 1911. Henry W. Hodges, clerk.

United States of America, 88:

To Samuel A. Drury and Samuel Maddox, Trustees, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, field in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Alexander R. Magruder and Isabel R. Magruder are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 22d day of December, in the year of our Lord one thousand nine hundred and eleven.

SETH SHEPARD,

Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged Dec. —, 1911.

J. J. DAVENPORT,

Counsel for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 22, 1911. Henry W. Hodges, Clerk.

Court of Appeals, District of Columbia, October Term, 1911.

No. 2265.

ALEXANDER R. MAGRUDER and ISABEL R. MAGRUDER, Appellants, vs.

Samuel A. Drury and Samuel Maddox. Trustees.

Assignment and Specification of Errors.

Now come the appellants in the above entitled cause and assign the following as errors on their appeal to the Supreme Court of the United States:

#### I.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree discharged the appellees as trustees to execute the trusts created by the will without requiring of them an account of their acts as such trustees prior to April 24th, 1899, and subsequent to the death of the testator, the late Judge William A. Richardson, October 19th, 1896, and in holding that inquiry into their acts prior to April 24th, 1899, is shut off by the settlement, by consent, of the accounts of the Executors by order of the Probate Court of Middlesex County, Massachusetts, passed April 24th, 1899.

#### II.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree finally discharged the appellees as trustees to execute the trusts created by the will without taking into account the fact that they had as trustees and without authority from or report to the Court appointing them, consented on behalf of the trust estate to the passage of a consent order of the Probate Court of Middlesex County, Massachusetts, by which \$18,800 was ordered to be paid out in diminution of the trust estate, of which \$18,800 the sum of \$1,500 was paid to one appellee for his own use as counsel fee and \$14,600 was paid to the other appellee for his own use.

#### III.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree finally discharged the appellees as trustees to execute the trusts created by the will without taking into account the fact that one of the appellees had made profits out of his dealings in his individual right with the trust estate, and without directing or permitting an inquiry into the extent of or the profit derived by him from the transactions of the firm, of which he was a member, with the trust estate in the nature of sales of negotiable paper to the trust estate bought at a discount by the said appellee's firm.

#### IV.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree allowed to the trustees the maximum commission permitted by custom or practice, five per cent of the principal and ten per cent of the income of the trust property, without taking into consideration the appellees' failures to account, set forth in the assignments of error numbered I, II and III, and in so far as said decree affirmed the report of the Auditor wherein it is held that the matters complained of are immaterial in fixing the appellees' commissions for their services as trustees.

#### V.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree fixed the compensation to be paid to the appellees as trustees by a calculation of a percentage upon \$313,321,34, the value of the principal of the personal estate as it came into the hands of the trustees, and disregarded the lesser value of the estate transferred to the appellants and the value thereof when they were discharged.

#### VI.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia "so far as that decree confirms the Auditor's report of the account of the trustees of the administration of the trusts created by the will", notwithstanding the fact referred to in the opinion of the Court that an important trust known as the Eliza C. Magruder trust, which was vested in and is being administered by the said trustees under the provisions of the will, has not yet been executed, and notwithstanding the fact shown by the record that the trust estate, consisting of valuable securities and real estate, still remains in the possession of the trustees.

#### VII.

The Court below erred in atlirming the decree of the Supreme Court of the District of Columbia "so far as the decree confirms the Anditor's report of the account of the trustees of the administration of the trusts created by the will", and provides that upon certain payments being made by them out of the trust fund in their possession, they shall be discharged from their office as trustees, notwithstanding the fact shown by the record that after the appointment of Mr. Drury and Mr. Maddox as trustees by the decree of April 1, 1899, the said Supreme Court of the District of Columbia, in recognition of the request or recommendation of the testator in his will, appointed and constituted his grandson. Alexander R. Magruder, one of the plaintiffs, and one of the beneficiaries under said will and an ultimate beneficiary in said Magruder trust, co-trustee with the said Samuel A. Drury and Samuel Maddox, trustees as aforesaid, and notwithstanding the fact that the said decree of appointment remains in full force and the said Alexander R. Ma-

gruder continues to be vested with all the rights, interests and powers vested in him by said decree of appointment, in all the property and funds, money and estate now in the possession of Samuel A. Drury and Samuel Maddox, trustees.

#### VIII.

The Court below erred in its decision and judgment wherein and whereby it gives and seeks to give validity and effect to the said decree so far as it confirms the Auditor's report as to the amount of the money due to the trustees as compensation for their services as trustees and provides that upon the payments being made by them, specified in the Auditor's report, to themselves and others named, they shall be discharged of and from their office as trustees under their appointment by the Court, while at the same time and by the same judgment, in respect of the Eliza C. Magruder trust, the said Drury and the said Maddox and the said Alexander R. Magruder are still and are to remain trustees and are to continue in possession of trust funds and property.

#### IX.

The Court below erred in determining and providing for the payment of definite sums of money to the trustees, Drury and Maddox, for their compensation out of the moneys of the estate in their possession before all the trusts in which they have been constituted trustees have been executed and before the rights and duties of their co-trustee, Alexander R. Magruder, in the trust property remaining in the possession of Drury and Maddox have been ascertaibed and settled, and before the said trustees have made a full and complete accounting as required by the original decree of appointment and the orders made thereunder.

#### X.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia holding and deciding that the exceptions taken by the appellants are not sufficient to require the recommitment of the case to the Auditor, and decreeing that said exceptions be severally overruled.

NATH'L WILSON, Attorney for Appellants.

(Endorsed:) No. 2265. Alexander R. Magruder, et al., Appellants, vs. Samuel A. Drury, et al. Assignment of Errors, Court of Appeals, District of Columbia. Filed December 30, 1911. Henry W. Hodges, Clerk.

## Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 168 inclusive contain a

true copy of the transcript of record and proceedings of said Court of Appeals in the case of Alexander R. Magruder and Isabel R. Magruder, Appellants, vs. Samuel A. Drury and Samuel Maddox, Trustees, No. 2265, October Term, 1911, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this

22d day of December A. D. 1911.

[Seal Court of Appeals, District of Columbia. 1893.]

HENRY W. HODGES, Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 22,991. District of Columbia Court of Appeals. Term No. 155. Alexander R. Magruder and Isabel R. Magruder, appellants, vs. Samuel A. Drury and Samuel Maddox, trustees. Filed December 30, 1911. File No. 22,991.

# Supreme Court of the United States.

OCTOBER TERM, 1914

No. - 17

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER, APPELLANTS,

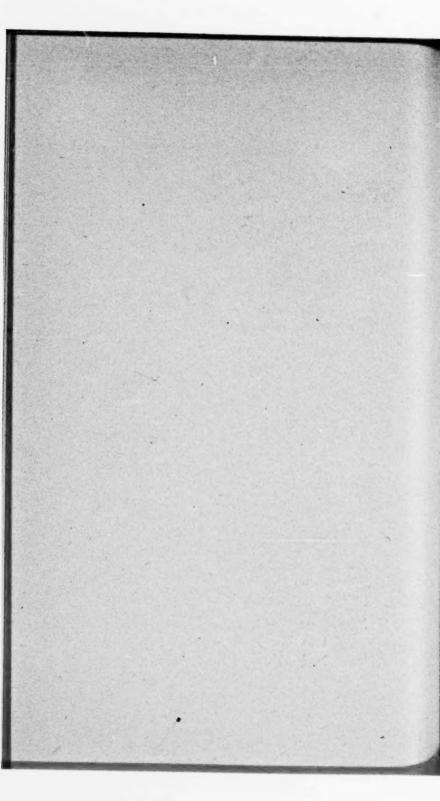
98.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLANTS.

NATHL. WILSON, Of Counsel for Appellants.



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### IN THE

# Supreme Court of the United States!

OCTOBER TERM, 1913.

### No. 155.

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER, APPELLANTS,

vs.

SAMUEL A. DRURY AND SAMUEL MADDOX, TRUSTEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## BRIEF FOR THE APPELLANTS.

#### Statement.

This case comes to this Court on an appeal from a decree of the court of appeals of the District of Columbia entered on the fourth day of December, 1911, confirming a decree of the Supreme Court of the District of Columbia, which confirmed the report of the auditor of that court, settling the final account of the trustees of the estate of William A. Richardson, deceased, and ordering the final discharge of the trustees, the appellees.

The appeal was duly taken, allowed, and perfected, and the transcript of the record was filed in this Court on the 30th day of December, 1911, pursuant to section 233 of the Code of Law for the District of Columbia, which provided that "any final judgment or decree of the court of appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars." The Judicial Code, restricting the right of appeal to this Court in cases arising in the District of Columbia, went into effect on the 1st day of January, 1912 (36 Stats., 1087, 1169).

The appellees, Samuel A. Drury and Samuel Maddox, were appointed by the decree of the Supreme Court of the District of Columbia, hereinafter for convenience termed the equity court, entered April 1st, 1899, trustees to perform the trusts created by the will of William A. Richardson, deceased, and were authorized and empowered thereby to receive from the executors named in his will "all the property whereof the said deceased died seized and possessed."

The general purpose of this suit, which was begun in the equity court in December, 1898, by the appellants, Alexander R. and Isabel R. Magruder, then infants, by Alexander F. Magruder, their father as their next friend, was to remove the administration of the estate and the execution of the trusts created by the will to the courts of the District of Columbia from the probate court of Middlesex County, Massachusetts, where the will had been admitted to probate, and incidentally to avoid the payment of taxes assessed against the estate in Middlesex County.

When the decree appealed from was entered, the general purpose of the bill, so far as it related to the distribution of the estate under the provisions of the will, had been in nearly all respects accomplished by the decree of distribution entered by the equity court on July 9, 1909.

That decree, however, reserved for determination the question of the compensation of the trustees for their services, the ascertainment of what, if anything, is due to or from the trustees or the estate, and the statement and approval of their final account (Rec., pp., 33-36).

The matters thus reserved for determination were referred to the auditor of the court, and his report thereon and the exceptions taken thereto, the report having been confirmed by the equity court and the court of appeals, present the questions which the appellants seek to have considered by this court.

The principal questions are:

First: Have the trustees fully accounted for the property, real and personal, which it is their duty to account for under the decree appointing them and under the orders entered in pursuance of that decree, and are they entitled to their final discharge?

Second: Are the trustees entitled to be paid a commission of 5 per cent on the sum of \$313,321.34, being the amount as alleged of principal personal estate, and a commission of 10 per cent on the net income of the estate, as a just and reasonable or "appropriate and proper" compensation for their services?

As the proceedings of the trustees are interlocked with the proceedings of the probate court at Cambridge



as well as with those in the equity court it will be necessary first to refer briefly to what is shown by the record to have happened in respect of the conduct of the two suits.

The proceedings in the probate court and in the equity court.

THE PROBATE OF THE WILL IN THE PROBATE COURT AT CAMBRIDGE, MASSACHUSETTS, IN OCTOBER, 1896, THE INVENTORY FILED AND THE ISSUE OF LETTERS TESTAMENTARY TO GEORGE F. RICHARDSON AND SAMUEL A. DRURY.

William A. Richardson died October 19, 1896, while occupying his own house in the city of Washington, with his family, which consisted of his only child, Mrs. Isabel Richardson Magruder, and her husband, Alexander F. Magruder, and their two children, his only grandchildren, the appellants, Alexander R. and Isabel R. Magruder. At the time of his death Mr. Richardson was Chief Justice of the Court of Claims.

He left a will executed in August, 1895, in which he described himself as "a citizen and inhabitant of Cambridge, in the county of Middlesex and Commonwealth of Massachusetts, and having property in said county" and nominated his brother, George F. Richardson, of Lowell, and Samuel A. Drury of Washington, executors and trustees.

Mr. Drury in his answer to the amended bill says that the will was in his, Mr. Drury's, possession at the time of Mr. Richardson's death; that Mr. George F. Richardson came on to his brother's funeral; that after the funeral the will was handed to Mr. Richardson who then

stated that "it was his deceased brother's wish that his will should be probated in Massachusetts and his estate there administered," to which Mr. Drury interposed no objection (Rec., p. 15).

On the 28th of October, 1896, the will was admitted to probate in the probate court at Cambridge, Mass., and letters testamentary issued to the executors named therein.

By this will, after making certain bequests, Mr. Richardson devised his property, consisting almost entirely of real and personal property in the District of Columbia, to his executors or whosoever should manage his estate, in trust for the benefit of his daughter during her life and after her death to be divided between his grand-children, one-half when they respectively attained the age of 23 years and the other half when they respectively attained the age of 26 years (Rec., p. 9).

In February, 1897, an inventory and appraisement were filed in the probate court which showed personal property of the estimated value of \$366,739.35, and realty of the estimated value of \$39,800 (Rec., pp. 84 and 85).

From that time until April, 1899, there were no other papers filed in the probate court so far as the record shows.

In the latter part of the year 1898, two actions were pending against the executors, brought by the collector of taxes for the City of Cambridge in the Superior Court of Middlesex County, to obtain the payment of taxes assessed on May 1, 1897, and May 1, 1898, upon the personal property belonging to Mr. Richardson's estate.

The amount claimed in each case was about \$5,000.

The suits were brought under the provisions of the Public Statutes of Massachusetts, Chap. 11, sec. 20, clause 7, which in part provides that the "personal estate of deceased persons shall be assessed in the place where the deceased last dwelt."

Mr. Maddox was the adviser and Judge Moody was the counsel for the executors, or rather of Mr. Drury, executor, for it appears from the statements of Mr. Maddox, hereinafter referred to, that Mr. Richardson was opposed to resistance of the tax.

On the 15th of November, 1899, the Superior Court of Middlesex County decided against the right of the collector to recover. That decision was affirmed by the Supreme Judicial Court of Massachusetts on the 16th of May, 1900, the court holding that defendants' testator was not an inhabitant of Cambridge and did not dwell there at the time of his death, and that the decision of the probate court sitting at Cambridge in admitting his will to probate and in issuing letters testamentary did not cut off inquiry as to residence when that question was being considered and when decided by another tribunal having jurisdiction of the subject of inquiry.

Dallinger vs. Richardson & Another, Executors, 176 Mass., 77.

This decision put an end to any real apprehension that the estate of Mr. Richardson could be assessed for taxes in Massachusetts, and removed that objection to the continued administration of the estate in Massachusetts, if that had been desired. THE INSTITUTION OF THIS SUIT IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA TO OBTAIN THE ADMINISTRATION OF THE ESTATE IN THAT COURT, AND THE APPOINTMENT OF TRUSTEES TO PERFORM THE TRUSTS CREATED BY THE WILL OF MR. RICHARDSON AND TO ENJOIN THE EXECUTORS FROM EXPENDING THE MONEY OF THE ESTATE IN THE PAYMENT OF MASSACHUSETTS TAXES.

In April, 1898, Mrs. Isabel Richardson Magruder, the daughter of Mr. Richardson and the wife of Dr. Magruder, died, her only children, the appellants, being then about 15 and 12 years of age respectively.

Dr. Magruder was appointed guardian of his children on the 30th of April, 1898, by order of the probate court of the District of Columbia.

In December, 1898, the two suits against the executors for taxes alleged to be due were still pending.

On the 30th of December of that year, 1898, the original bill of complaint was filed in the equity court in the name of Alexander R. and Isabel R. Magruder, the appellants, by their next friend, their father, Dr. Alexander R. Magruder, against George F. Richardson and Samuel A. Drury as executors and trustees under the Richardson will, and the amended bill was filed on the 5th of March, 1899, by the same complainants against Samuel A. Drury, executor and trustee alone, Mr. George F. Richardson having declined to act as a trustee.

Mr. Richardson not only declined to act as trustee, but, when the bill was filed making him and Mr. Drury defendants and seeking an injunction, he refused to submit to the jurisdiction of the court, and thereupon Mr. Maddox amended the bill and got a temporary restraining

order. Mr. George F. Richardson was opposed to the suit. This is Mr. Maddox's explanation of the filing of the amended bill (Rec., p. 77).

The original and the amended bills were both signed by Mr. Maddox as solicitor for the complainants.

The amended bill, repeating the principal averments of the bill first filed, after reciting Mr. Richardson's official and judicial career and his ownership of property. alleged that at the time of his death, Mr. Richardson was not a citizen of or a permanent resident or inhabitant of the State of Massachusetts; that he had no property there except a few parcels of land; that his domicile was in the District of Columbia where his home was and where nearly all his property was situated; that the probate court in Massachusetts in which the will was probated was without jurisdiction in the matter of his will and had not and could not have any authority or control whatever over his estate, and that no part of the property of the estate was located in said state or protected by its laws, and that the complainants were entitled to have their rights protected by the supreme court of the District of Columbia from the payment of taxes in Massachusetts.

Paragraphs 11, 12, and 13 of the amended bill state with great emphasis the possession of the property by Mr. Drury and that the complainants are entitled to an accounting in the equity court by the executors, as follows:

11. And these plaintiffs further aver and show that although the said George F. Richardson qualified as one of the executors of said will, at or about the time of its probate in the said County of Middlesex, yet he did not and has not undertaken to perform any duty as such executor, beyond attending to the routine proceedings in said court. To the contrary thereof these plaintiffs aver that the entire care, custody and management of said estate have devolved upon the defendant who from the date of said probate has had in his keeping, and now has, all the money, securities and other assets of said estate, except only the household furniture belonging thereto, and has disbursed all moneys paid out and expended in and about the settlement of said estate and for the maintenance and support of these petitioners.

12. And these petitioners further show that under and by virtue of the powers and authority in said will contained, the executors thereof and trustees thereunder will have full and absolute control over said property and estate until the plaintiffs attain the ages of 23 and 26 years, respectively, and that they will receive and disburse large sums of money for the objects and purposes in said will specified. And these plaintiffs are advised that they are entitled to an accounting in this honorable court for all the property and estate passing under said will, from time to time, and as often as may be necessary, and that such an accounting will be a protection to the defendant in the execution of his trust.

13. That said George F. Richardson has declined to act as trustee under said will, by an instrument in writing, addressed to the honorable, the judge of said probate court, a certified copy whereof is herewith filed, marked "Complainant's Exhibit No. 2," which it is prayed may be read at the hearing of this cause and taken and considered a part hereof.

The prayers for relief were in substance as follows:

That the will of Mr. Richardson might be construed and the rights of the complainants ascertained by the court.

That an account should be taken of all the property of the estate received by Mr. Drury as executor and trustee.

That Mr. Drury, as executor and trustee, be required to file accounts showing what moneys he had received and the disposition thereof.

That some fit and proper person should be appointed trustee in the place of George F. Richardson, resigned, to execute the will.

That Mr. Drury should be restrained from paying out any money belonging to the estate for taxes to the State of Massachusetts (Rec., p. 9).

A few days after the filing of the amended bill Mr. Drury, the defendant, on the 11th day of March, 1899, filed his answer thereto, in which he declared—

that under and by virtue of the trusts reposed in the executors and trustees in said will named and nominated they will have full control of all the property of said deceased, both real and personal, until such time as the plaintiffs attain the ages of twenty-three (23) and twenty-six (26), respectively, and that said executors and trustees will during that period receive and disburse large sums of money for the purposes in said will specified. And answering for himself, this defendant is willing and hereby consents to now account in this honorable court, or in any other court having jurisdiction in that behalf, for all moneys and other property received by him as such executor and trustee, and to hereafter further account from time to time and as often as may be necessary or proper (Rec., p. 15, 16).

On the 1st of April, 1899, the equity court entered the following decree appointing the trustees, which is set out at length because of its controlling importance and authority:

This cause coming on for final hearing on the amended bill, the answer of defendant Drury thereto, and the proofs taken in support thereof, and being submitted without argument and duly considered, it is, thereupon, this 1st day of April, A. D. 1899, ordered that the restraining order heretofore passed in this cause be, and it is hereby, continued till the further order of the court:

.And it appearing to the court that the late William A. Richardson was last domiciled in the District of Columbia, and that the sole beneficiaries under his last will and testament bearing date the 9th day of August, A. D. 1895, his grandchildren, the infant complainants herein. have always lived, and are now living, in said District, it is, the day and year aforesaid, adjudged, ordered and decreed that Samuel A. Drury and Samuel Maddox, both of said District. be, and they are hereby, appointed trustees to perform the trusts created in and by said will. and authorized and empowered to receive from the executors named in said will all the property whereof the said deceased died seized and possessed, provided, nevertheless, that the said Samuel A. Drury and Samuel Maddox shall first give separate bonds in the penal sum of twentyfive thousand dollars, each, with one or more sureties to be approved by this court, conditioned for the faithful discharge of their duties as such trustees (Rec., pp. 16, 17).

When this decree was entered and their bonds approved, the trustees became entitled to the possession, management and control of all the property belonging to the Richardson estate which was then in the possession of Mr. Drury and to an accounting from Mr. Drury as to all the property that came into his possession at the time of Mr. Richardson's death or after, and the complainants became entitled to an accounting from the trustees in respect of their dealings with the same property.

The bill and the amended bill of complaint, a copy of the will of Mr. Richardson and of Mr. Drury's answer and of the decree appointing the trustees, appear in the record, pages 1 to 17, inclusive.

THE DECREE OF THE MASSACHUSETTS PROBATE COURT OF APRIL 11, 1899, OBTAINED BY THE EXECUTORS DIRECTING THE EXECUTORS TO PAY OVER THE TRUST FUNDS TO DRURY AND MADDOX, TRUSTEES, AND RECOGNIZING THE DECREE OF THE EQUITY COURT OF THE DISTRICT OF COLUMBIA.

The jurisdiction of the Supreme Court of the District of Columbia in equity having been successfully invoked, and Mr. Drury and Mr. Maddox having been appointed trustees with authority to possess and manage the estate of Mr. Richardson, Mr. Drury as executor and Mr. George F. Richardson as executor, early in April, 1899, presented to the judge of the probate court at Cambridge, with the consent of the guardian of the minors, their petition insisting that the will should have been probated in the District of Columbia and asking that they, the executors, should be authorized to pay over the property of the estate and

trust fund to the trustees appointed by the supreme court of the District of Columbia and that thereupon they should be discharged from further responsibility. On the 11th day of April, 1899, the probate court, after referring to the petition and to the order appointing the trustees and to the consent given by all the parties in interest and stating that the laws of the District of Columbia secured the due performance of said trust, entered a decree recognizing in a conspicuous way the jurisdiction of the equity court of the District of Columbia and evincing in an authoritative way its intention to transfer the administration of the estate to that court.

This decree is as follows:

COMMONWEALTH OF MASSACHUSETTS,

Middlesex, ss:

At a Probate Court Holden at Cambridge, in and for said County of Middlesex, on the eleventh day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

On the petition of George F. Richardson and Samuel A. Drury, Executors of the last will of William A. Richardson, praying that they, the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, be authorized to pay over all the trust funds held in trust by them, the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, to Samuel Maddox and Samuel A. Drury, both of Washington in the District of Columbia, duly appointed by the Supreme Court of the District of Columbia Trustees under the will of the said William A. Richardson.

It appearing that all living parties who are interested in the said trust created by the will of the said William A. Richardson reside out of the Commonwealth, to wit, in Washington in the District of Columbia, and it further appearing by a decree of the said Supreme Court of the District of Columbia, dated the first day of April, A. D. 1899, a copy whereof is filed with said petition that Samuel Maddox and Samuel A. Drury were duly appointed trustees to perform the trusts created in and by the will of the said William A. Richardson, and it further appearing that the only living cestuis que trust are Alexander R. Magruder and Isabel R. Magruder, minors, and residents of said Washington in the District of Columbia, and that Alexander F. Magruder, of said Washington, guardian of the said minors, by virtue of an appointment made by the said Supreme Court of the District of Columbia, dated the 30th day of April, A. D. 1898, has signified his consent as such guardian to the granting of the petition aforesaid; and it further appearing to the satisfaction of the Court that the laws of the District of Columbia secure the due performance of said trust, and it being deemed just and expedient so to do:

It is hereby decreed that the said George F. Richardson and Samuel A. Drury, Executors as aforesaid, be and hereby are authorized and directed to pay over the said trust funds to the said Samuel Maddox and Samuel A. Drury, Trustees as aforesaid.

Chas. J. McIntire, Judge of Probate Court. (Rec., pp. 87, 88). As the trust funds and property were already in the possession of Mr. Drury, no further act of transfer appears to have been considered requisite at that time.

It is stated in the opinion of the court of appeals that the executors were ordered to present an account of their administration (Rec., p. 157), but a careful examination of the record fails to disclose such an order.

THE DECREE OF THE MASSACHUSETTS PROBATE COURT ENTERED APRIL 25, 1899, ALLOWING, UPON THE APPLICATION, AND AT THE REQUEST OF THE TRUSTEES, THE FIRST AND FINAL ACCOUNT OF THE EXECUTORS FOR THE PERIOD BEGINNING NOVEMBER 24, 1896, AND ENDING WITH APRIL 24, 1899.

A few days after the entry by the probate court of the decree of April 11, 1899, directing the transfer of the trust funds by the executors to the trustees, and declaring that the probate judge considered that the laws of the District of Columbia secured the due performance of the trust, an account was prepared in Washington, purporting to be the first and final account of the executors, Mr. Drury and Mr. Richardson, up to April 25, 1899.

This account was made up from the books and papers in the possession of Mr. Drury and was verified by him and transmitted to Lowell and verified by Mr. Richardson and then presented to the probate judge and allowed by him on the 25th of April, 1899.

The account appears in the record, pages 88 to 91. On it when presented to the probate court there was the following written request for its allowance by the guardian and the trustees:

The undersigned, being all persons interested (Isabel R. Magruder, the daughter of the said William A. Richardson, having died in April, 1898), having examined the foregoing account, request that the same may be allowed without further notice.

ALEXANDER R. MAGRUDER, ISABEL R. MAGRUDER,

By Their Guardian, Alexander F. Magruder, Samuel Maddox, Trustee. Samuel A. Drury, Trustee.

(Rec., p. 89).

The executors charged themselves with the sum of \$415,458.37, as being the aggregate amount or value of the *personal* property received by them as executors, as shown by Schedule A therewith exhibited.

Credit was claimed by them for the same amount as being the aggregate of all the sums paid out and disposed of by them as executors, as shown by Schedule B therewith exhibited, and the account was thus balanced.

In Schedule B there appeared eight items of money, notes, and other personal property, aggregating \$301,-031.71, as having "been paid, transferred and delivered to Samuel Maddox and Samuel A. Drury, trustees, appointed by the Supreme Court of the District of Columbia." (Rec., p. 90).

The trustees gave the following written receipt on the account for the eight items specified in the account as property delivered to them by the executors, although the property had been in their possession as trustees since the date of their appointment, April 1, 1899:

We, Samuel Maddox and Samuel A. Drury, trustees under the will of William A. Richardson, by appointment of the Supreme Court of the District of Columbia, hereby acknowledge that as trustees we have received the property set forth in the last eight items of the foregoing account.

Samuel Maddox. Samuel A. Drury. (Rec., p. 91).

On the day it was presented the account was allowed by the probate judge, and the following decree entered:

At a Probate Court held at Cambridge, in said County, on the Twenty-fifth Day of April, A. D. 1899.

The foregoing account having been presented for allowance, and verified by the oath of the accountants, and all persons interested having consented thereto in writing, and no objection being made thereto, and the same having been examined and considered by the court:

It is decreed that said account be allowed.

Chas. J. McIntire, Judge of Probate Court. (Rec., p. 89).

On inspection of this account it will be seen that the difference between the value of the personal property with which the executors charged themselves as having been received by them, viz, \$415,458.37, and the value of the property receipted for by the trustees, viz, \$301,031.71, the difference being \$114,426.66, was not ac-

counted for except by gross items of expenditure, which included \$49,705.31 expended on real estate, taxes, "prior mortgages," etc., and \$16,731.64 paid for various trust estates held by Judge Richardson, although no real estate was returned or described in the account.

In the account was an item of \$18,800 credited to the executors as "expense of administration," and it will hereafter appear that that amount was paid out of the funds of the estate to Mr. Drury and to counsel without action thereon by the equity court.

The allowance of the account was the last proceeding in the probate court relating to the estate.

This account and the receipt of the trustees thereon were afterwards put forward and made use of by the trustees as absolving them from all accountability as trustees except in respect of the property receipted for by them to the executors, and what was subsequently received by them, and except Mr. Drury's subsequent dealings with the real estate as trustee under the will.

The circumstances under which the account was prepared by and for the executors and trustees, and the pecuniary benefits that the trustees derived from its allowance, are shown by the testimony of the trustees themselves, subsequently given before the auditor and hereinafter to be considered.

All the proceedings in the probate court from the filing of the inventory and including the account and its allowance, are contained in the Rec., pp. 83 to 91, inclusive, and for convenience of reference are reprinted in sequence as Exhibit B to this brief.

The acts and doings of the trustees after their appointment and after the entry of the decree of the probate court approving the account of the executors, and the use made by them of that decree.

The trustees did not then or at any time prior to July, 1909, make a report to the equity court of the action of the probate court or of their own action in respect of the allowance of the executors' account, nor as to the property belonging to the estate at the time of Judge Richardson's death, nor as to the disposition thereof by the executors, except as to the property specified in the executors' account and receipted for thereon by the trustees.

The first proceeding taken by them in the cause after their bonds were approved was to obtain an order from the equity court on the 18th of October, 1899, referring the cause to the auditor—

"to ascertain and report the amount and character of the estate, real and personal, whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will of said deceased" (Rec., p. 17).

The auditor's report under this reference was not filed until the 19th of December, 1900, nearly two years after the appointment of the trustees. In it the auditor made mention of the order of reference and of all its requirements, but for some reason he wholly disregarded the direction of the court to ascertain and report the amount and character of the property, real and personal, whereof Mr. Richardson died seized, and to state the account of the executors and trustees under the will (Rec., pp. 17-22, etc.)

The record does not show what representations, accounts and claims the trustees then made to the auditor, but it shows that the auditor stated the account of the trustees and charged the trustees with the sum of \$270,209.04 as the amount of the principal personal estate received by the trustees from the executors, which was less by over \$30,000 than the amount the trustees receipted for on the executors' account.

The first item of credit in the account thus stated by the auditor was the sum of \$18,800 as having been paid by the trustees to the executors, which was the same amount that appeared in the executors' account as having been paid by the executors for expenses of administration.

To the auditor's report was attached a schedule or statement of the real estate included in the trust, enumerating some forty pieces or parcel of real estate in the city of Washington, the value of which was not stated or estimated (Rec., pp. 17 to 24).

The personal property thus designated and described in the auditor's first report as having been received from the executors amounted to \$270,209.04, and the real estate described in the schedule or statement reported by the auditor constituted all the property belonging to the estate for which the trustees have been held accountable by the auditor and the court of appeals.

The trustees in their first account and the auditor in his first report assumed and acted on the assumption, without explanation, that the limit of the liability of the trustees to account, to make reports and returns, was determined by the decree of the probate court, and the assumption that the rights of the beneficiaries and the rights and duties of the trustees to have a report as to the estate that went into the possession of Mr. Drury as executor and trustee, and to an accounting by him according to the averments of right in the bill of complaint and according to the admissions and assertion of Mr. Drury, did not exist or were not to be recognized.

The auditor's first report was based upon that assumption, and the four reports that followed the first one, all of which were confirmed without objection, and the trustees' sixth account, not yet finally confirmed, were based upon the same assumption of the limited liability of the trustees to account and as to the effect of the decree of the probate court as a bar to any inquiry into the condition or history of the estate prior to the entry of that decree.

The auditor's first report included the account of the trustees in respect of the Eliza C. Magruder trust and a full statement of the origin and character of that trust, and the second, third, fourth, fifth, and sixth reports include the accounts of the trustees in that matter, and the record shows the present predicament of that, trust which will be referred to later in this brief.

# The effort of the beneficiaries to end the trust, to divide the trust property and to obtain the final settlement of the trustees' accounts.

During the period which was covered by the five accounts and reports referred to, from April 1, 1899, to and including their last account, all of which were ratified and confirmed, the trustees had under the decrees of the equity court exclusive management and control of the Richardson estate, including the Eliza C. Magruder trust.

In April, 1906, in deference to the wishes expressed in the will of Mr. Richardson, Alexander R. Magruder was appointed co-trustee with Mr. Drury and Mr. Maddox, but he took no part in the management of the estate for reasons that appear in the record.

At that time Alexander was about to be graduated from Harvard College. Mr. Maddox testified that his feelings towards Alexander were not very friendly because he, Mr. Maddox, insisted "that Alexander ought to make a deed conveying to his father a life estate in the Frederick farm, Araby." This Alexander refused to do.

Mr. Maddox's explanation of the demand then made by him of his clients, the beneficiaries, for whom he was trustee, that they should convey to their father, Dr. Magruder, a life estate in a valuable piece of property which the trustees had purchased for a country residence for the family with funds of the estate, was that some years before, when Dr. Magruder was ill and likely to die, Judge Richardson persuaded Dr. Magruder to convey to him certain property which he had by inheritance, to hold in trust, to pay the income and rents of the real estate to Dr. Magruder's sister for her life, and on her death to give the property to Dr. Magruder's two children.

Mr. Maddox, being apparently deeply impressed with what he considered the injustice to Dr. Magruder of this trust, whom he describes as having been his intimate personal friend for very many years, suggested to Alexander, he says, that the "least he could do was to give Dr. Magruder a life estate in the property at Araby

which did not cost as much as Dr. Magruder's interest in the property conveyed in trust was worth."

This conduct of Alexander caused Mr. Maddox to declare at a hearing before the auditor that he did not care to have any further friendly relations with a son like that, and to say in reply to a definite question that it was certainly a fact that he was much more concerned for the interests of Dr. Magruder than he was for the interests of Alexander (Rec., pp. 81-82).

The manner in which the Eliza C. Magruder trust was created, and its advantageous provisions for Dr. Magruder's sister and all the particulars thereof, were, explained in the auditor's first report (Rec., pp. 19 to 22).

There was not a particle of evidence adduced before the auditor showing that Dr. Magruder was at any time dissatisfied with or complained of the trust or of the conduct of the beneficiaries in relation thereto. It appeared in fact that Dr. Magruder and his family had been allowed to occupy the farm Araby, which cost over \$15,000, free of rent in summer and in winter the town house on H Street, valued at \$35,000 also free of rent.

Mr. Maddox's interference in the matter of the Eliza C. Magruder trust and the conveyance of Araby, and his aspersion of the conduct of Judge Richardson, made cooperation between the three trustees impossible and the relations between the trustees and their cestuis que trust hostile, and the beneficiaries patiently waited for the time to arrive when the trust could be determined under the provisions of the will.

Alexander became entitled to one-fourth part of his grandfather's estate under the terms of the will on arriving at the age of 23 years and to another one-fourth on arriving at the age of 26 years. He became 23 years of age on the 17th of January, 1906, but made of the trustees no request for the one-fourth part of the estate to which he was then entitled.

As the 17th of January, 1909, approached, Alexander and his sister, Isabel, the latter of whom would become entitled to one-fourth part of the estate in April, 1909, first employed counsel other than Mr. Maddox to advise them as to their rights and interests and to represent them in the suit.

Timely notice was given to the trustees that a division of the estate would be required, and the trustees prepared and presented a schedule or list of a great number of small properties and of a great number of promissory notes, which were reported as constituting all the property of the Richardson estate, including the property belonging to the Eliza C. Magruder trust estate.

Much time and labor were expended during the succeeding six months in the effort to ascertain and decide how the great number of the properties, securities and promissory notes, etc., described in the lists furnished by the trustees and constituting the estate, could be fairly separated into two allotments or apportionments of equal value, the property described in one list to be conveyed at once to Alexander R. Magruder, and the property described in the other list to be conveyed to Isabel R. Magruder, one-half when she should become entitled to one-half of her share in April, 1909, and one-half to be held in trust for her until she should become entitled thereto in April, 1912.

Finally plans for a division which was to be made, and schedules and lists of the properties composing each one of the two allotments that were to be recognized and given effect to were prepared by two persons of admitted competency and disinterestedness, and were completed and accepted by the complainants and acquiesced in by the trustees. Great care was taken to make the estimates and valuations stated in these schedules fair and accurate, and they have never been criticised.

The two descriptive schedules or lists of the two allotments and valuations and of the property to be held jointly, as signed by the appraisers, are printed in the record between pages 32 and 33 and on page 33 and marked Magruder Exhibit D, Allotment A and Allotment B.

When the allotments and the division to be made had been finally agreed upon and determined, the complainants, on the 16th of June, 1909, presented their petition to the equity court setting forth the valuation and proposed division of the property reported by the trustees to be in their possession, and asked that a decree might be entered and conveyances executed to carry into effect the plan of division agreed upon.

With the petition there was filed a copy of the decree of the probate court allowing the account of the executors and of the account. This was the first presentation of the account to the equity court, and the first official intermation given to that court of the allowance of the account by the probate court in April, 1899. The petition also prayed that the case might be retained to have stated and settled the accounts of the trustees and their compensation determined, and what, if anything, is due the estate and what property, if any, remains in the possession of the trustees (Rec., pp. 27-32).

On the 9th of July, 1909, the decree hereinbefore referred to was entered, dividing and distributing all of the estate of Mr. Richardson in its entirety as reported by the trustees, except the sum of \$11,187.78, directed to be held by the trustees. Conveyances were directed to be made according to the provisions of the decree, and the cause was retained as prayed to have ascertained and reported the compensation to be allowed to the trustees and to state their final account and what was due from or to the trustees (Rec., pp. 32 to 37, inclusive).

It is to be noticed that by the decree of distribution and the allotments and valuations therein referred to and recognized by the court and adopted by the parties interested, the total value of Judge Richardson's estate, which the beneficiaries received from the trustees under the decree of distribution, was \$261,201.71, including the country estate and city residence, which were valued at \$50,000, but not including the sum of \$11,187.78 remaining in the hands of the trustees.

The value of all the personal property distributed was \$142,811.73, and the value of the realty was but \$118,-389.98. The total value, retained and distributed, was \$272,389.49.

The proceedings before the auditor, the evidence adduced, the facts elicited, and the auditor's conclusions and report.

The inquiry which the auditor was directed to make involved the ascertainment by him of the basis and extent of the trustees' liability to account to the equity court; their compliance or non-compliance with their duty in that respect; the services rendered by them; the compensation justly due them for their services, considering their conduct in the administration of the trust; and their right to be discharged.

The auditor had before him and examined in the course of his inquiry the recorded proceedings, the decrees and orders of the equity court and of the probate court in Massachusetts, the five intermediate accounts of the trustees covering the period from the time of their appointment, April 1, 1899, to January 17, 1909, their sixth and last account, and their later report accompanying it, dated July 7, 1910, and filed as an exhibit with the auditor's report.

In addition to and in explanation of the documents, reports, etc., introduced in evidence, the trustees gave their testimony before the auditor at the nine hearings beginning February 9, 1909, the last one being on February 16, 1910.

At these hearings the testimony of the trustees, the only witnesses examined, was taken and reported, and is contained in the record, pages 51 to 83, inclusive.

In respect of the questions submitted to the auditor and which he determined, all or nearly all of the material facts and actual transactions on which the answers to the questions depend are not the subjects of denial or dispute.

The present controversy is as to the legal inferences and effect of the undisputed facts.

FACTS AND FINDINGS AS TO THE TRUSTEES' FAILURE
TO ACCOUNT FULLY.

The rustees' accounts and testimony before the auditor plainly show what property the trustees considered it their duty to account for and what property they did actually account for, and that the property actually accounted for was no more than the personal property receipted for by them to the executors on the account of the executors allowed by the decree of the Massachusetts probate court on the 25th of April, 1899, hereinbefore referred to, and certain designated realty and personal property subsequently received.

From the same accounts and testimony it appears that the trustees did not make any report, return, or account of all the property, real and personal, of which the testator died seized and possessed, or of the disposition of the property of the estate by his executors from the time of the probate of his will to the date of the appointment of the trustees, or of the property that came into their possession at the time of their appointment and until April 25, 1899, and also that Mr. Drury as executor never made any report or rendered any account to the equity court of the property that came into his possession as executor and trustee under the will.

From the same accounts and testimony it also appears that the trustees contended before the auditor that their liability to account to the equity court was limited and fixed by the decree of the probate court entered on the 25th day of April, 1899, allowing the first and final account of the executors, covering the period from November 24, 1896, to April 25, 1899, including the period of twenty-four days after the date of the appointment of the trustees, and also that they were absolved and exempted by said decree of the probate court from accounting to the equity court for the sum of \$18,800, allowed to the executors by the said decree of allowance entered by the probate court April 25, 1899.

The facts disclosed by the testimony of the trustees, relating to the origin of the account, the purpose and circumstances of its construction, the uses made by the trustees of the account and of the decree approving it, and the benefits obtained by the trustees therefrom, are material in connection with this contention and defense and should be stated.

Mr. Drury and Mr. Maddox agree in their testimony as to the time, place, and manner of the preparation of the account after they were appointed trustees and after the probate court directed the delivery of the trust funds by the executors to the trustees, a few days before the decree was entered at Cambridge, on the 25th cf April, 1899, and that the allowance of the account was recommended by them.

Mr. Drury testifies that the reason the account was prepared hastily was because of the fact that Mr. Weir, a lawyer who was associated with young Mr. Richardson, who was taking care of part of the tax title suit in Massachusetts, had an appointment at the Arlington on a Sunday to prepare the papers, and two days after that, he thinks on Tuesday, that report was passed by the Massachusetts court. It was made out between that Sunday afternoon when they held the meeting at the Arlington and the time necessary to get it started to Boston or Lowell to have it passed.

The account was made out from data exclusively in the possession of Mr. Drury and from his books and under his supervision (Rec., p. 59).

Mr. Maddox testified that he had nothing whatever to do with the items, which were prepared by Mr. Weir who came down to Washington to help Mr. Richardson in preparing the executors' final account which was necessary to be completed in a very great hurry, and that they were in a very great hurry to get the personal estate out of the jurisdiction of the Massachusetts court, because on the 1st of May following another tax year would begin, and they were exceedingly anxious, under the advice of Mr. Moody, to close the executors, account in Massachusetts before the 1st of May (Rec. p. 75).

Mr. Drury and Mr. Maddox besides testifying before the auditor made also a lengthy report entitled "report of the trustees and schedule to accompany their sixth and final account before the auditor," which was made Exhibit 3 to the auditor's report,

This report is printed in tull in the record, pages 96 to 128 inclusive, and contains a defence of the proceedings of the trustees.

In it reference is made to the telegram received by Mr. Drury on the 21st day of April, that Mr. Weir would meet

him at the Arlington on the 23d of April, and in this report they stated that "Mr. Drury thereupon hastily prepared his account, as executor, summarizing the property on hand estimated at \$415,458.37 and showing all moneys paid out on account of the trust."

This report placed the responsibility for the making of the account and for its contents on Mr. Weir, a lawyer of Lowell and an associate of Mr. George F. Richardson (Rec., p. 97).

When examined before the auditor Mr. Maddox, on cross-examination and with reference to his recommendation for the allowance of the executors' account, testified that he had practically no information as to the making up of the account and does not know by whom it was actually made.

When asked upon what representation he as trustee recommended the approval of the account, he answered that it was upon the recommendation of Mr. Weir (Rec., p. 76).

FACTS AND FINDINGS AS TO FAILURE TO ACCOUNT FOR \$18,800,

In respect of the sum of \$18,800, for which the appellants claim the trustees have not accounted but for which they are still accountable, the testimony of Mr. Drury disclosed the folloing facts:

On the 24th day of April, 1899, the trustees being then in possession, actual or constructive, of the securities and moneys of the estate, Mr. Drury, custodian thereof, segregated and took therefrom \$13,000 in notes and \$5,800 in cash, in the aggregate \$18,800. (Rec., p. 60).

Of this sum Mr. Drury kept \$14,600 as compensation for his services to the estate as executor up to that time, and that amount money went into the commission account of Arms & Drury as the earnings of one of the firm.

On the same day, April 24th, the item of \$18,800 was charged on his books "as the allowance for fees, etc., in Massachusetts" (Rec., p. 61).

The remainder of the money was used by Mr. Drury in the payment by him by check of that date to Mr. George F. Richardson of \$1,000, which Mr. Richardson refused to receive and turned it over to Mr. Weir, and in the payment to Mr. Maddox and Mr. Moody of \$1,500 each by his checks dated June 1, 1900.

Other payments for small sums amounting to \$200 were made, but to whom Mr. Drury does not remember (Rec., p. 61).

The explanation given of this proceeding by Mr. Drury in his testimony, which was confirmed by the testimony of Mr. Maddox, was that the item of \$18,800 was put into the executors' account when the account was made up at the Arlington as "expense of administration" with the "understanding" between Mr. Weir and Mr. Maddox and himself that out of that amount the fees connected with the tax suit were to be paid and that the remainder was to be the compensation to Mr. Drury for his services (Rec., p. 60).

The item in the account relating to the "expense of administration" was as follows:

Expense of administration, including care of property, the payment of debts, the making of final account, the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and other sources of \$58,168.94, the payment of about

\$50,000 for repairs on real estate, the taking up of prior mortgages, taxes, etc., including also the payments of moneys to Isabel Magruder and to Alexander F. Magruder, the guardian of their minor children, counsel fees incurred in the defense of suits for taxes in Massachusetts and for counsel fees in Washington, etc., \$18,800 (Rec., p. 90).

Mr. Drury testified that the data and particulars making up that item were furnished by him, but he says positively that he made himself no suggestion or request whatever as to the *amount* that was to be fixed and allowed in the account as compensation, but that the amount of "the *compensation* as it was thought would be passed by the Massachusetts court was suggested by Mr. Weir" (Rec., p. 59).

Mr. Maddox testified that on Sunday, the 23d of April, Mr. Weir made the summary, giving the items for which allowance of \$18,800 was asked, and with that Mr. Drury had nothing to do except that he was told or given to understand that out of it he must pay counsel fees in the tax cases and counsel fees in Washington, but not the costs and expenses of the suits, and that after the payment of those fees whatever was left of the \$18,800 would be an allowance to the executors for services in connection with the estate (Rec., p. 97).

Mr. Maddox, having admitted his recommendation for the payment of the account, was asked in respect of this item of \$18,800 and was unable to say on what basis it was fixed, and when asked how he could recommend the payment without knowing what it was based on said that he trusted Mr. Richardson and thought Mr. Richardson would do what was right up there and knew what

compensation was allowed executors in Massachusetts (Rec., p. 76).

Mr. Drury and Mr. Maddox in their testimony and the auditor in his report make lengthy explanations of the mistake which it is alleged the trustees made in their first account (Rec., p. 22), which was allowed by the auditor in claiming and receiving credit for the sum of \$18,800 as having been paid by the trustees to the executors as commission allowed by the probate court of Massachusetts, when in fact that item should not have appeared in the trustees' account at all, because it was a sum allowed to the executors and paid out by the executors under the decree of the probate court of April 25, 1899.

Mr. Maddox and Mr. Drury, correcting this mistake, testified that when that account was made and approved in December, 1900, the trustees had forgotten or overlooked the fact that they had not received any part of the estate prior to April 24th, "though it had theretofore been in Mr. Drury's keeping as executor" (Rec., p. 98).

Their assertion was that their accounts and accounting should really begin and should be considered as beginning on the 25th day of April, 1899, and not on the date of their appointment or on the date when they qualified as trustees, which Mr. Maddox stated was the 4th of April, 1899 (Rec., p. 75).

The trustees therefore presented with their report a corrected first account, omitting the \$18,800 as a matter with which the trustees were not concerned (Rec., pp. 98-99).

The explanations of Mr. Drury and Mr. Maddex leave unchanged the fact testified to by Mr. Drury and Mr. Maddox that after their appointment as trustees and while they were trustees Mr. Drury, under a decree obtained by them as trustees, paid to himself \$14,600 of the moneys of the estate as compensation to himself for services as executor and to Mr. Moody \$1,500 for his services as counsel, and to Mr. Maddox \$1,500 for his services as an attorney in the tax cases, and made no report thereof to the equity court.

In respect of the payment by the trustees of the sum of \$18,800, appearing in their first account allowed by the auditor, and also in the executors' account allowed by the probate court, and in respect of the executors' account the auditor concluded:

"I had no authority to open an account of the Auditor confirmed by the Court without the specific direction of the Court; that therefore neither would I reform the Auditor's first account or pass upon the propriety of the allowance to the executors. It seems to me, also, that even if I could or would reopen the Auditor's report, the allowance by the Massachusetts Court could not be reviewed by this Court, which has no jurisdiction of the Executors or their accounts' (Rec., p. 39).

The final account of the trustees as stated by the auditor adhered to this theory.

The decision of the court of appeals on this point is the subject of the first and second specifications in the assignment of errors (Rec., p. 168).

Exceptions were taken to these rulings of the auditor in and by exceptions 12 and 13 (Rec., p. 131), which were overruled by the equity court (Rec., p. 132).

FACTS AND FINDINGS AS TO TRUSTEE'S PERSONAL PROFITS
FROM DEALINGS WITH THE TRUST ESTATE.

A further contention made by the complainants before the auditor was that whatever personal gains and profits in money had been realized by one of the trustees, Mr. Drury, from purchases of notes by the trustees with funds of the estate from the partnership of Arms & Drury, ought to be ascertained by the auditor and charged against Mr. Drury, and be taken into account in determining whether any compensation should be paid to the trustees, or at least in determining the amount of compensation.

It appeared from Mr. Drury's testimony that the firm of Arms & Drury was a partnership, of real estate, loan and insurance brokers; and that the trustee, Mr. Drury, was a partner having a half interest in that firm (Rec., p. 65).

At the second hearing before the auditor inquiry was begun as to the purchase of certain notes appearing in the trustees' last, their sixth, account (Rec., p. 54).

Mr. Drury testified that these notes were all bought by the trustees from Arms & Drury, that Arms & Drury got a commission, "but it was not this money that was used directly to make these loans. Arms & Drury made the loans and then as the money accumulated the trustees purchased the notes" (Rec., p. 54). Further, that the commission was one to two per cent; and that, to the best of witness's recollection, no commission was charged on renewals of notes held by the estate, "but that covers a long period" (Rec., p. 55).

Subsequently Mr. Drury was questioned generally

as to the purchase of notes from Arms & Drury, and notice was entered on the record of the contention of the complainants, and that information was desired as to the profits derived by him by the sale of notes by his firm to the trustees, and he was requested to prepare himself to give that information later if he could not do so then (Rec., p. 66).

At that time Mr. Drury said that the profit from the sale of the notes was nothing, that the profit from the purchase of the notes was something, that it would be very difficult to determine, that his books would show, but it would require an immense amount of work to arrive at it (Rec., p. 66).

No full or complete answer to this inquiry was ever given, nor was it insisted upon before the auditor, inasmuch as the auditor intimated in the course of the hearings that an inquiry as to the profits of Arms & Drury through their dealings with the trust estate was and would be considered immaterial.

It was developed before the auditor, however, that from the death of Judge Richardson to the distribution in 1910, the firm of Arms & Drury was intimately connected with the conduct of the business of the trust estate, indeed that its administration was carried on from the offices of that firm. Arms & Drury collected the rents, and placed the insurance, for both of which functions they charged a commission (Rec., p. 65). As to repairs, Mr. Drury was asked if Arms & Drury ordered them, and said (Rec., p. 66), "I did; it is all the same;" and that the bills were rendered to the firm. The books of the trusteeship were in Arms & Drury's

office and kept by them, being in one continuous account from the death of Judge Richardson (Rec., pp. 96, 98), and the clerks of the firm were the clerks of the estate (Rec., p. 65). All of the commissions allowed to Mr. Drury by the courts went, not to Mr. Drury individually, but to Arms & Drury, and such of the \$18,800 passed by the Massachusetts courts for "expense of administration" as was converted by Mr. Drury to his own use, went, not to Mr. Drury individually, but to the partnership of Arms & Drury (Rec., p. 62).

It was developed that the transactions between the trustees and Arms & Drury were innumerable; and that hundreds or thousands of notes were sold by Arms & Drury to the trustees.

In respect of certain lists of notes about which he was questioned Mr. Drury testified that about ninety per cent of them were purchased of Arms & Drury (Rec., p. 62), but later, when inquiry was made as to a list describing notes amounting to over \$200,000, he said that those purchased of Arms & Drury did not amount to over sixty-five or seventy per cent of them and that he would correct his first statement (Rec., p. 71). The remaining notes were taken by the trustees as proceeds of sale of realty, and in renewal of secured or foreclosed loans (Rec., pp. 63, 69).

In respect of all the notes bought of or through Arms & Drury, he testified that the profit of Arms & Drury was from 1 to 2 per cent (Rec., pp. 71, 72, and 74).

It was a part of the business of the firm and it was their custom to buy with their own money promissory notes and securities and to hold them until they could find purchasers. Mr. Drury says:

"It was the practice of Arms & Drury, and still is their practice, to take any good loan that is offered to them and which they think is a first-class loan, not knowing at the time of the purchase or make the loan where it will be disposed of; we simply make a loan and wait for clients to come in with the money and take it off our hands" (Rec., p. 65).

The proceeds of the notes when sold belonged exclusively to them. The firm's profit, equally divisible between the partners, would be the difference between what they paid for the notes and what they sold the notes for, and that profit would be realized in or out of the proceeds of the sale when received. All of the notes in question were dealt with in this way.

At one time, on redirect examination, Mr. Drury said that the *borrower* paid the profit in each case, and that the *borrower* paid it to Arms & Drury for loaning the money *before* the time of the sale of the notes to the estate, and that no profit was realized by the sale of the notes to the estate (Rec., pp. 74-75).

At another time he said simply "these notes cost Arms & Drury their face, less a certain commission" (Rec., p. 63). They sold these notes to the trustees at face value plus accumulated interest (Rec., p. 64).

Mr. Maddox's interpolation, printed on pages 55-57 of the record, is evidently intended to raise the inference that the notes transferred to the trustees from Arms &

Drury were the product of building loans, and that no loss had come to the estate.

No evidence was adduced to support either of these assertions. As to the character of the loans, Mr. Drury says (Rec., p. 65) "they were not necessarily all builders' loans" (see also Rec., p. 67).

The complainants contended that they were entitled to an accounting as to his purchases from his firm, irrespective of the question of gain or loss to the estate.

It is in the record, however, that the last account of the trustees showed that they had in their possession notes amounting to but \$138,642.00 (Rec., p. 91), while their first account showed \$248,569.01 of good promissory notes and in addition \$26,907.96 considered desperate (Rec., p. 22). This diminution was accompanied by a diminution in value of the entire estate during the same period, as is herein elsewhere referred to.

The auditor finally held that all inquiry into such profits was inadmissible, and this ruling is made the subject of the third, fourth and tenth assignments of error.

FACTS AND FINDINGS AS TO THE ELIZA C. MAGRUDER TRUST, AND ITS RELATION TO THE RICHARDSON ESTATE.

In pursuance of the order of reference entered in the equity court on the 3rd of February, 1910, hereinbefore referred to (Rec., p. 37), directing the auditor "to state the final account of said trustees in respect of what is known as the Eliza C. Magruder trust," the auditor, in schedules G and H attached to his report and referred to therein, stated the account of the trustees down to February 8, 1910 (Rec., pp. 46 and 140-1-2).

The schedules showed the property belonging to the trust, which was supposed to be worth from twenty to thirty thousand dollars, a part of which property was included in the inventory filed in the Massachusetts probate court.

In their first account the trustees included the property belonging to the Magruder trust and the income derived therefrom, and the auditor in his first report, filed December 19, 1900, stated the account of the trustees in respect thereof (Rec., pp. 19 and 25).

In his report the auditor gave a full explanation of the creation of the trust and a copy of the declaration of trust made by William A. Richardson, February 9, 1894, from which it appeared that Eliza C., Magruder, Alexander F. Magruder, with Isabel Richardson Magruder, his wife, and John R. Magruder and his wife, conveyed to Judge Richardson the property therein described, and on the same day, Judge Richardson made a declaration of trust declaring that he held the property in trust to pay the income after deducting taxes, etc., to Eliza C. Magruder during her life, and at her death to convey all the property, real and personal, to the children of Alexander F. Magruder.

The declaration further provided that on the death of the declarant all the trusts, powers, and obligations vested in him by the conveyances and declarations of trust to which the parties in interest gave their written approval, should vest in and be executed by his executors or whoever should settle his estate in the same manner as they vested in him (Rec., pp. 21-22).

The trustees took charge of the Magruder trust and of

the trust property and continued in possession from the time of their appointment, assuming that authority so to do was given them by the decree of April 1, 1899, and accounting therefor from time to time.

When the decree of partial distribution under Mr. Richardson's will was entered the trustees remained trustees of the Eliza C. Magruder trust and in possession of the trust property, declining to surrender the trust.

When the auditor's last report was made and the accounts in respect of that trust were stated by the auditor, no exception was taken thereto, and the trust continued vested in the same trustees and they continued in possession of the trust property.

Afterwards the cause coming on for hearing in the equity court on the exceptions to the auditor's report, that court overruled all the exceptions and confirmed the auditor's report, and decreed that after payments of money made in compliance with the auditor's report "the said Samuel A. Drury and Samuel Maddox be, and they are hereby, discharged of and from their said office of trustees under their said appointment by the court in this cause" (Rec., p. 132).

This decree deprived the two trustees of all authority under the decree of April 1, 1899, and left the trust property belonging to the continuing Magruder trust in the possession of the two trustees, and leaving Alexander R. Magruder still a trustee under the order appointing him a co-trustee entered in the equity court April 18, 1906.

The court of appeals held that although the decree of April 1, 1899, appointing the trustees appointed them "to perform the trusts created by the will," and mentioned no other trust, the trustees were also appointed trustees of the Magruder trust, which was to be considered a separate trust, and that the equity court did not intend to terminate that trust.

The court, therefore, affirmed with costs the decree of the equity court so far as it confirmed the auditor's report of the account of the trustees of the administration of the trusts created by the will, but so far as the Eliza C. Magruder trust is concerned remanded the cause with leave and direction to the equity court to amend the decree in so far as it may relate thereto, and to take such final action regarding that trust estate as may be expedient and proper (Rec., p. 165).

This affirmance of course carried with it the affirmance of the auditor's report as to the completion of the trustees' duties and the compensation awarded the trustees on that supposition.

This decision and judgment is the subject of the sixth specification in the assignment of errors (Rec., p. 169).

FACTS AND FINDINGS AS TO THE COMPENSATION FOUND DUE THE TRUSTEES AND AS TO THE RESULTS OF THE TRUSTEESHIP.

The order of reference passed February 3, 1910, directed the auditor to state the final account of the trustees and "report such commission or compensation to the trustees as may be appropriate and proper" (Rec., p. 37).

The auditor reported that he had "no hesitancy in

finding that the trustees are well entitled to the commissions which they claim, five per cent on that part of the principal upon which they have received no commissions and ten per cent on the income" (Rec, p. 46).

In the progress of the cause the trustees had been allowed and paid as compensation a commssion of ten per cent on the net income of the estate and five per cent on the proceeds of the sale of certain real estate, as appeared from their five accounts previously approved.

Their sixth and final account, as presented and referred to the auditor, showed no claim for commissions except on income and on the proceeds of the sales of realty, but at the hearing before the auditor on the 16th of April, 1909, Mr. Maddox submitted to the auditor an account of the personal estate, amounting to \$262,599.74 including sales of realty, that had passed through the hands of the trustees on which no commissions had been allowed, but on which he thought commissions should be allowed.

Mr. Maddox testified that it was for the auditor to decide the rate or basis of the allowance, that he thought the commission should be about five per cent, and that it had been a very troublesome estate since it was turned over by the executors to the trustees (Rec., pp. 54-55).

The auditor did not, however, adopt the figures of the trustees, but stated their account in pursuance of his own findings.

He found that the total net income was \$152,184.76, and on that sum he allowed a commission of 10 per cent which amounted to \$15,218.47.

He found that the balance of the principal personal estate on which no commissions had been paid was \$313,321.34, and on that sum he allowed a commission of five per cent which amounted to \$15,666.06.

The total commissions allowed were \$30,884.50.

Deducting from this sum the payments previously made to the trustees and appearing in their accounts, and after making certain corrections, the auditor found that the amount still due the trustees as compensation for their services was \$14,046.42, payable out of the moneys remaining in the hands of the trustees under the decree of distribution and that there remained for each beneficiary \$425.46 (Rec., pp. 143-4-5).

Before considering on what these findings were based and the services of the trustees and how their compensation was determined, a brief preliminary statement of what the estate consisted and what its value was when it was committed to the trustees, and what it consisted of when the decree of distribution was entered, and what was then the value of the estate distributed, will be useful.

The results of the trustees' administration plainly appear in the record.

The trustees' first account and the auditor's report thereon filed December 19, 1900, show that the trustees received and charged themselves with the sum of \$270,209.04, as being the amount of the "principal personal estate received from the executors" and with 40 pieces or parcels of ground "included in the trust" and designated in the schedule attached to the account, which,

however, gave no information as to the value of the property or the time when it was acquired (Rec., pp. 22-23).

The property disposed of by the decree of distribution of July 9, 1909, as being all the property then belonging to and constituting the estate of Judge Richardson except the sum of \$11,187.78 held by the trustees to await the ascertainment of their compensation, was, as is shown by the schedules or allotments referred to in the decree, the following:

Realty, (26 pieces), valued at	\$118,389.98
Personalty, valued at	142,811.73
Total value of the estate at close of administration.	\$261,201,71

The value of the entire estate, real and personal, (less the cash retained), at the close of the trusteeship was less than the amount of the personal estate at the beginning of the trusteeship by about \$10,000, leaving out of consideration the value of the real estate. The amount of loss seems the equivalent of 14 pieces of real estate which were turned over to the trustees, but seem to have disappeared before the estate was transferred to the beneficiaries.

The evidence as to the auditor's method of ascertaining the trustees' compensation and his finding that the principal of the personal estate was \$313,321.34, upon which a commission of five per cent was to be calculated and allowed as compensation, and his finding that upon the entire net income of the estate a commission of ten per cent was to be allowed.

The method adopted by the auditor of determining what compensation is now due the trustees was to ascertain and fix the principal of the personal estate and allow a commission of five per cent on that sum, and to ascertain the total net income from the estate and to allow a commission of ten per cent on that sum, and then to support and justify his finding and the percentages made use of by a general description of the importance and extent of the labors, usefulness and ability of the trustees.

In finding that \$313,321.34 was the balance of the principal personal estate on which the trustees are entitled to a commission of five per cent, the auditor made no reference to and did not take into consideration the fact that the entire amount of the personal estate turned over to the beneficiaries in pursuance of the decree of distribution was only \$142,811.73.

He arrived at the sum named by taking the amount of the personal estate shown by the trustees' first account to have been received by them from the executors, \$270,209.04, and then adding thereto the proceeds of all the sales of realty sold by the trustees, \$58,874.99, and then deducting therefrom the proceeds of the sales of realty on which the trustees had already been paid commissions, and deducting also sundry other items.

From these additions, subtractions, and corrections there resulted the sum of \$313,321.34, on which the commission of five per cent was allowed (Rec., pp. 142-3).

Objections to this arbitrary and apparently unusual way of ascertaining compensation are apparent on the face of the account and were urged at the hearings.

Attention was called to the fact that there was nothing whatever in the evidence to show that all the real estate sold by the trustees had not been purchased by the trustees with the moneys or the proceeds of notes received by them from the executors, and that the allowance of five per cent on the money and notes received from the executors and also on the sales of property purchased with the money and proceeds of the notes received by the executors would be double commissions.

To meet this objection, which is noticed by the auditor in his report, the auditor appears to have made a personal examination as to the sales of realty after the hearings were closed. He found that "in only two instances have the trustees received or claimed commissions on real estate into which some of the notes were converted." These instances he describes. He does not correct the account, because the schedules had already been prepared, and because the trustees had already waived other items, but he suggests that "if the court sees fit" a deduction of five per cent on the amount of the two notes carried into the transactions relating to purchases and sales "be made in the decree" (Rec., p. 44).

This suggestion was not noticed by the equity court or by the court of oppeals, as those courts in every instance and in every particular approved the finding of the auditor.

The auditor in turn had accepted and approved all the statements of the trustees made in their testimony and in their long review of their services filed as Exhibit 3 to the auditor's report (Rec., pp. 96 to 128).

In respect of allowances which the trustees had claimed and which had been approved, such as the payment to Arms & Drury as commissions for the collection of rents and the payments to Mr. Maddox in one or more cases for services as counsel, but which the trustees considered it proper to withdraw, the auditor in his report takes occasion to express his approval of the propriety of the original allowances and to express the liberal view he holds as to the rights of trustees to give to themselves and their associates special employment and compensation in the transactions of the business of the estate.

Concerning the purchase of notes from Arms & Drury and the employment and payment of Arms & Drury to collect rents, effect insurance, etc., and the employment of Mr. Maddox as counsel, the auditor stated that he could see no force in the objections made thereto and that "the customs with respect to these transactions are so well known and so well fixed that it might perhaps be well claimed the court may take judicial notice of them" (Rec., p. 41).

The finding of the auditor that the net income from the estate during the time of trusteeship amounted to \$152,184.76 was not questioned (Rec., p. 143).

The evidence relating to the selection and designation by the auditor of the percentages and proportions named by him as measures or means of determining the compensation of the trustees, namely five per cent of the principal personal estate and ten per cent of the net income and the applicability of that designation to the facts appearing in the record.

There was and is no statute or rule of court in force in the District of Columbia fixing or regulating the compensation of trustees for services such as those imposed upon these trustees. No witness testified as to any practice, usage, or custom specifying the percentages named by the auditor or authorizing their use in the manner in which they were employed by the auditor.

There was nothing in the evidence showing why five per cent and ten per cent rather than any greater or less percentage should be used to measure compensation.

The facts of the case required the exercise of the auditor's own judgment and opinions, independently of any fixed rule of calculation, as will be made apparent.

The evidence relating to the services performed by Mr. Drury and Mr. Maddox as trustees and to the consequences, efficiency and value of those services.

The testimony of the trustees and their accounts show that their services in respect of so much of the estate as they admitted their liability to account for, and which continued for ten years and resulted in a large loss to the estate, were in continuation of the services performed by Mr. Drury alone, as active or managing executor and trustee in respect of the entire estate of Judge Richardson during the two years and seven or eight months intervening between the probate of the will and the appointment of the trustees in April, 1899.

At the conclusion of his administration an apparent deficiency also appeared.

In the inventory of the property of the estate verified by Mr. Drury the schedule of personalty showed property valued at \$328,124.57 of good assets and \$38,-614.78 of bad or doubtful notes.

The schedule of real estate showed property including

a part of the Eliza C. Magruder trust property valued at \$39,800.

The total value of the property inventoried was \$406,139.45.

The schedule did not contain the lots in Cambridge to which the bill of complaint and the answer of Mr. Drury referred, nor is there anywhere in the record an account of the disposition of those lots (Rec., pp. 84-5).

In the executors' account prepared by Mr. Drury on the 23d or 24th of April, 1909, the executors charged themselves with \$415,458.37 as the value of the personalty. No mention is made of any realty.

In the same account the last eight items amounting to \$301,031.71 are accounted for as having been paid to the trustees.

The difference between this sum and the sum of \$415,458.37, the difference being \$114,426.66, was accounted for only by the items of expenditure appearing in the account which was allowed.

The estate had diminished to that extent (Rec., pp. 88-89-90).

The services of the trustees, like those of Mr. Drury as executor, are shown by their statements and accounts to have been of the usual and commonplace kind incident to the investment of money, the purchase and sale of property, the changes of investment and the collection of interest and rent, the payment of taxes and insurance, and the making of repairs, etc., and were all obviously well within the competency of any real estate broker and real estate agent of average ability, skill and experience.

From the time Mr. Drury was made executor and during all the following years of his trusteeship to July, 1909, the business of the estate was transacted as previously by and through the firm of Arms & Drury, brokers. The auditor refers to the firm as the "agents of the trustees."

There were no legal complications or difficulties of any kind of importance. No instruction was ever asked of the equity court except in a single instance, when authority was requested for the purchase by the trustees of an estate in Maryland as a summer home for Dr. Magruder's family.

The only suits of importance in which the estate was involved were the suits concerning taxes in Massachusetts and this suit brought to transfer the administration of the estace to the District of Columbia and which resulted in the appointment of Mr. Drury and Mr. Maddox trustees.

The closeness of the relations of Arms & Drury to the estate and the extent to which the firm relieved the trustees from labors appear from the accounts and from the testimony, which show that the greater part of the investments of the real estate were made through Arms & Drury and that they were actually paid commissions for collecting the rents and received a part of the premiums for insurance.

The commissions for collecting rents which were allowed to Arms & Drury were finally withdrawn by the trustees (Rec., p. 144).

As to the service rendered by Mr. Maddox, his primary duty was as counsel to his clients in the suit brought by himself, and the record does not show that he actually performed any service whatever as trustee that could not have been performed by Mr. Drury himself as trustee with the aid of his firm who shared with him the compensation he received as trustee, except in the few suits referred to in the record in which he was separately paid for his services.

In respect of their conduct and administration as trustees the auditor in his report finds that—

> "The trustees have given the services of a trained and experienced business man in real estate matters and a trained and experienced member of this bar during all these years in the execution of this trust, services which have been highly creditable to them and beneficial to the estate in every respect."

He therefore made to the trustees the allowances appearing in this report and in the account stated (Rec., p. 45).

The court of appeals approved the auditor's report and the allowances thereby made for compensation holding—

"that while the allowance was a liberal one, it is not obviously excessive" (Rec., p. 159).

The report of the auditor and also the opinion of the court of appeals contained summaries of accounts, enumerations of notes, lists of transactions, statements made up of an infinite number of small items taken from the report of the trustees and from the books of Arms & Drury, which showed how a great part of the money of the estate was turned into lands and houses which came under

the care of Arms & Drury as house agents and brokers, and how the real and personal property and the exchanges and investments thereof were made tributary to the general business of Arms & Drury.

The assertion made by the trustees that not a single dollar was lost to the estate by reason of any of the notes purchased by them of Arms & Drury is repeated almost literally in the report and in the opinion, but there exists the fact of the gradual diminution of the estate and the further fact that the trustees have not given the complete particulars of any one transaction in the purchase of notes, or stated in any one case what the profit realized by the firm was.

The evidence of the facts and of the existing conditions which render the ascertainment of the compensation of the trustees impossible and the effort to determine it premature.

Attention has already been called to the proofs which demonstrate the neglect and failure of the trustees to account for the property they were required to account for by the decree appointing them, and their neglect and failure to account for the personal profits realized by them from the purchase of notes from Arms & Drury, and their retention of the property belonging to the Eliza C. Magruder trust and the non-performance and completion of that trust, and the evidence need not be again referred to.

The legal consequences of the established facts as constituting a barrier to the discharge of the trustees and to the final determination of their commissions will be considered in the argument. The evidence of the acts by the trustees in the administration of the trust which bar recovery by them of any compensation for their services.

Attention has been called also to the proceedings and evidence which demonstrate the contrivance of the trustees before their appointment to deny and defeat the jurisdiction of the Massachusetts court, their subsequent invoking of that jurisdiction to secure the allowance of a large sum for their personal use, their refusal to account for the early period of their trusteeship, their refusal to make a full account of Mr. Drury's personal profits, the attempts of Mr. Maddox to destroy a part of the trust, and his hostility toward the beneficiary who insisted upon preserving it intact. These proceedings and evidence are therefore not here again recited.

The legal consequences of the established facts as constituting a bar to the allowance to them of any compensation whatever will be considered in the course of the argument.

# Assignment and Specification of Errors.

The appellants assigned the following as errors on their appeal to this court:

I.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree discharged the appellees as trustees to execute the trusts created by the will without requiring of them an account of their acts as such trustees prior to April 24, 1899, and subsequent to the death of the testator, the late Judge William A. Richardson, October 19, 1896, and in holding that inquiry into their acts prior to April 24, 1899, is shut off by the settlement, by consent of the accounts of the Executors by order of the Probate Court of Middlesex County, Massachusetts, passed April 25, 1899.

# II.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree finally discharged the appellees as trustees to execute the trusts created by the will without taking into account the fact that they had as trustees and without authority from or report to the Court appointing them, consented on behalf of the trust estate to the passage of a consent order of the Probate Court of Middlesex County, Massachusetts, by which \$18,800 was ordered to be paid out in diminution of the trust estate, of which \$18,800 the sum of \$1,500 was paid to one appellee for his own use as counsel fee and \$14,600 was paid to the other appellee for his own use.

# III.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree finally discharged the appellees as trustees to execute the trusts created by the will without taking into account the fact that one of the appellees had made profits out of his dealings in his individual right with the trust estate, and without directing or permitting an inquiry into the extent of or the profit derived by him from

the transactions of the firm, of which he was a member, with the trust estate in the nature of sales of negotiable paper to the trust estate bought at a discount by the said appellee's firm.

IV.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree allowed to the trustees the maximum commission permitted by custom or practice, five per cent of the principal and ten per cent of the income of the trust property, without taking into consideration the appellees' failures to account, set forth in the assignments of error numbered I, II, and III, and in so far as said decree affirmed the report of the Auditor wherein it is held that the matters complained of are immaterial in fixing the appellee's commissions for their services as trustees.

# V.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia in so far as said decree fixed the compensation to be paid to the appellees as trustees by a calculation of a percentage upon \$313,321.34, the value of the principal of the personal estate as it came into the hands of the trustees, and disregarded the lesser value of the estate transferred to the appellants and the value thereof when they were discharged.

## VI.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia "so far as that decree confirms the Auditor's report of the account of the trustees of the administration of the trusts created by the will," notwithstanding the fact referred to in the opinion of the Court that an important trust known as the Eliza C. Magruder trust, which was vested in and is being administered by the said trustees under the provisions of the will, has not yet been executed, and notwithstanding the fact shown by the record that the trust estate, consisting of valuable securities and real estate, still remains in the possession of the trustees.

#### VII.

(Not printed because not intended to be urged.)

#### VIII.

The Court below erred in its decision and judgment wherein and whereby it gives and seeks to give validity and effect to the said decree so far as it confirms the Auditor's report as to the amount of the money due to the trustees as compensation for their services as trustees and provides that upon the payments being made by them, specified in the Auditor's report, to themselves and others named, they shall be discharged of and from their office as trustees under their appointment by the Court, while at the same time and by the same judgment, in respect of the Eliza C. Magruder trust, the said Drury and the said Maddox and the said Alexander R. Magruder are still and are to remain trustees and are to continue in possession of trust funds and property.

#### IX.

The Court below erred in determining and providing for the payment of definite sums of money to the trustees, Drury and Maddox, for their compensation out of the moneys of the estate in their possession before all the trusts in which they have been constituted trustees have been executed and before the rights and duties of their co-trustee, Alexander R. Magruder, in the trust property remaining in the possession of Drury and Maddox have been ascertained and settled, and before the said trustees have made a full and complete accounting as required by the original decree of appointment and the orders made thereunder.

### X.

The Court below erred in affirming the decree of the Supreme Court of the District of Columbia holding and deciding that the exceptions taken by the appellants are not sufficient to require the recommitment of the case to the Auditor, and decreeing that said exceptions be severally overruled (Rec., pp. 168-171).

# Argument,

The errors specified in the assignment are grouped for argument under the following points:

I. The trustees' failure to account fully in this cause according to the decree appointing them, and the futility of their attempt to diminish their accountability by obtaining the Massachusetts probate decree of April 25, 1899, (Assignment of Errors, I, IX, and X; infra, pp. 60-80.)

II. The trustees' failure to account in this cause for the specific fund of \$18,800, which they withdrew from the trust funds, and then procured to be allowed to the executors by the Massachusetts probate decree of April 25, 1899. (Assignment of Errors, II and X; infra, pp. 80-85.)

III. The trustees' accountability for the profits realized by Mr. Drury from sales of notes to the trust estate. (Assignment of Errors, III and X; infra, pp. 85-94.)

IV. The performance of the trust imposed upon the trustees by the decree of their appointment is not completed, because a part thereof, called the "Eliza C. Magruder trust," remains unexecuted and the trust property remains in the possession of the trustees. (Assignment of Errors, VI, VIII, IX, and X; infra, pp. 94-95.)

V. The erroneous allowance of compensation to the trustees and the erroneous fixing of the amount thereof. (Assignment of Errors, IV, V, IX, and X; infra, pp. 95-10).

#### POINT I.

The trustees' failure to account fully in this cause according to the decree appointing them, and the futility of their attempt to diminish their accountability by obtaining the Massachusetts probate decree of April 25, 1899.

The most serious phase of the trustees' derelictions, developed upon the reference to the auditor, was the fact that the two trustees, Drury and Maddox, never have accounted fully for the period between April 4, 1899, the date of their qualification and April 25, 1899, and that the testamentary trustee, Drury, has never accounted for the period between the death of Judge Richardson, October 19, 1896, and April 25, 1899.

April 25, 1899, was the date of the consent decree discharging the executors in Massachusetts, and, in form, settling their accounts there.

The effect of their failure to account on their right to compensation will be separately considered under Point V. This portion of the argument is intended to demonstrate that they have failed and should be now compelled fully to account.

The facts material to this contention have been fully set out hereinbefore (supra, pp. 28-36).

It is not denied that after Judge Richardson's death, October 19, 1896, and until April 25, 1899, no account was rendered to any court by those administering the property of which Judge Richardson died seized and possessed.

THE FAILURE TO ACCOUNT IS WITHIN THE SCOPE OF THE REFERENCE.

The auditor considered that the inquiry proposed was beyond the scope of the reference; and that his authority in stating the sixth and "final" account was confined to an accounting of the balances of money and property shown to remain by the previous intermediate accounts, and that neither he nor the equity court could review the allowances to the executors or their account as filed in the Massachusetts Court (Rec., pp. 39, 73).

In respect of compensation to be allowed the trustees as upon the completion of their duties, it seems very clear that any failure of the trustees to account fully or any unauthorized or unreported action by them would be material, and obviously all that is here said as to such failure and action of the trustees is what is elsewhere herein claimed to have been erroneously disregarded in fixing compensation.

But their failure to account was material upon an even more serious aspect of the case referred to the

auditor; for upon this "final" accounting it was his duty to ascertain and report any fact which was a bar to their final discharge. The fact that the trustees have not yet fully accounted, is such a bar.

A purpose of the original bill was to obtain an account from Mr. Drury of the property which he had received as executor and trustee (Prayers 3, 4, Rec., p. 9).

The order of April 1, 1899, appointing Maddox and Drury trustees, authorized and empowered them to receive from the executors "all the property whereof the said deceased died seized and possessed" (Rec., pp. 16, 17).

The next order entered in this cause, that of October 18, 1899, directed the auditor "to ascertain and report the amount and character of the estate, real and personal, whereof the late William A. Richardson died seized and possessed, and to state the account of the executors and trustees under the will" (Rec., p. 17).

The auditor's report under this reference, filed December 19, 1900, does not purport to be a statement of the executors' accounts, or of anything except the property which the trustees stated they had received from the active executor, and certain listed real estate (Rec., p. 22). Of this property it is but an "intermediate account," purporting to settle nothing except its handling during the period it covered. It was intended to cover the period from the transfer of funds and property from the Massachusetts executors, April 25, 1899, and it was only by accident antedated to April 1, 1899.

Subsequently the approval of the five intermediate accounts by the equity court, and by the order of dis-

tribution entered July 9, 1909, the cause was retained for the purpose of having ascertained, among other things, "what property, if any, belonging to said estate, remains in the possession of said trustees and not disposed of by this decree" (Rec., p. 37).

It was to carry out this purpose, the present reference was made by the order of February 3, 1910, wherein the auditor was directed "to state the final account of the trustees and the distribution of the trust estate in their hands" (Rec., p. 37).

The auditor stated that the present audit "will terminate their trust" (Rec., p. 38), and upon the overruling of the exceptions the trustees were ordered discharged (Rec., p. 132).

The present accounting therefore stands upon quite a different basis from those preceding it. They were merely annual or intermediate accounts, not litigated and *ex parte*. This is a final one upon an adversary proceeding.

Errors or omissions in those accounts could upon well established equitable principle, be corrected in subsequent accounts, but errors in this final account are irreparable.

It became quite obvious upon this reference that the purposes of the bill and the scope of the first order of reference had been overlooked, and that a hiatus existed in the accounts. Can it be seriously urged that the fact that former annual accounts have been passed by the Court is a bar to the granting of the full relief prayed and evidently intended to be granted or a defense against the present demand for a complete accounting?

The rule is tersely stated in 36 Cyc, at pages 502-4, as follows:

"A decree rendered on the final settlement of a trustee has the force and effect of a judgment.

"An annual or intermediate settlement is, as to any matters actually litigated, conclusive upon a subsequent accounting; but as to matters not litigated on such an accounting it is not conclusive.

"Annual or intermediate accounts are to be taken as only prima facie correct, and may be opened on any subsequent account where error or mistake clearly appears" (Trusts, VI, F).

A case in which the propriety of attacking accounts previously settled, on a later accounting, was considered, was that of Jackson vs. Reynolds, 39 N. J. Eq., 313. In that case, upon the fourth account of surviving executors and trustees, objection was urged by the beneficiaries to commissions allowed in three former accounts. By appeal from a decree upon exceptions to the final account, the case came before the Court of Errors and Appeals of New Jersey, which said:

"It is true that a partial account once settled is deemed prima facie correct, and there should be convincing evidence of error before the orphans' court should open it, or upon final accounting should correct it. Here, however, there is no question concerning the presence of evidence upon which the action of the court was grounded, for the error appears conspicuously upon the face of the accounts. That the power existed in

the orphans court to correct the error is, I think, manifest.

"Regarding the method of procedure adopted in the present case, it may be said that probably the better practice in dealing with a partial account, in which an error is alleged to exist, is to attack it directly by a rule to set it aside in respect of the matter complained of. This has the advantage of directness, and in bringing into court parties who may have been interested in the first, but have no interest in the last account. Such parties, for instance, are deceased or discharged executors, or trustees who have settled their account as joint trustees with those still surviving. "Where, however, the parties to both accounts are identical, there is no apparent reason why the court can not deal with an error in the first account wherever there are exceptions filed in the last account, clearly pointing out the error alleged to exist in the earlier account. All parties have notice, and so have opportunity to be heard."

A similar question was considered by the Supreme Judicial Court of Massachusetts in the case of Blake vs. Pegram, 109 Mass., 541, in which the lower court had, upon a last reference of trustees' accounts to the master, directed an inquiry as to whether certain allowances made in former accounts had been "heard and determined . . . as matters in dispute between the parties." The Court said:

"It is not necessary to consider minutely the effect of the additional facts reported and relied on to show that these matters were heard and determined by the probate court at the time the former accounts were allowed; because we are

all satisfied that, if they could not be brought in question without leave of the court, that leave ought to be given, and was properly given. There was in reality no controversy or discussion in the probate court upon these objectionable charges; and whatever assent the guardian ad litem gave to the accounts was given without any communication with the ward, and was a mere formality."

### And further:

"Another objection urged by the appellees is, that the accounts can be opened only by proceedings to set aside the decree allowing the same, upon an application to be first made in the probate court. . . . But the objections to the allowance of these accounts, as originally filed in the probate court, were, substantially, applications to have the former accounts reopened. The allowance of the accounts in that court, without hearing the objecting party, was a denial of leave so to open them, which gives to this court jurisdiction to grant such leave, at least to the extent covered by the reasons of appeal as assigned."

# THE FAILURE TO ACCOUNT WAS NOT CURED BY ACQUIESCENCE.

The court of appeals finds a further bar to the taking of an account covering this period of the trust in "the acquiescence of all parties at interest" (Rec., p. 162).

Acquiescence is a "silent appearance of consent" (Bouvier's Law Dictionary).

In Pence vs. Langdon, 99 U. S., 578, this Court said:

"Acquiescence and waiver are always questions of fact. There can be neither without knowledge.

The terms impart this foundation for such action. One can not waive or acquiesce in a wrong while ignorant that it has been committed" (p. 581).

In Matthews vs. Murchison, 17 Fed., 760, 766, the Circuit Court said:

"Acquiescence—that is, assent—is tantamount to an agreement. It is an implied contract, and it requires for its validity the power to contract."

What "parties at interest," having "knowledge" and "power to contract," by their "silent appearance of consent" lost their right to claim that the period prior to April 25, 1899, should be accounted for?

The only child of Judge Richardson, Isabel, died April 4, 1898, leaving as her only children the appellants, who were then infants. The appellants did not become of age until 1904 and 1907 respectively.

Surely no consent can be attributed to Isabel Magruder, who did not live to see a single account of the executors or trustees or to know of their transfer from Massachusetts to the District of Columbia.

Nor can consent be attributed to the appellants. They were the clients of Mr. Maddox until the present reference, and neither they nor their new counsel knew of the gap in the accounts nor of the circumstances of the settlement in the executors' accounts until the testimony was being taken in the audit from which this appeal is taken.

They have had heretofore no knowledge or opportunity of knowledge and until recently have had no capacity to consent.

THE FAILURE TO ACCOUNT IS NOT CURED BY THE PROBATE DECREE OF APRIL 25, 1899.

The auditor and the court of appeals both hold themselves concluded from making an examination of the executor's or trustees' accounts prior to April 25, 1899, by the decree settling the executors' accounts in Massachusetts on that day.

The court of appeals totally misapprehended, or at least misstated, the contention of the appellants on this point. That court, in its opinion, says:

"Appellants contend that the Probate Court of Massachusetts had no jurisdiction to probate the will" (Rec., p. 159).

The appellants do not so contend.

The appellants do contend, however, that the order passed in Massachusetts on April 25, 1899, is, and appears on the face of the Massachusetts record to have been intended by that court to be, inoperative to diminish the accountability of the executor and trustees to this court.

The court of appeals treats the appellants' contentions as though the present were an attempt to impeach or refuse credit to the adjudications of the court of Massachusetts. Nothing could be further from the truth. Nothing that the Massachusetts court intended to do is sought to be undone by the appellants.

What that court intended was to discharge George F. Richardson and Samuel A. Drury as executors from further accountability to that, the court of their appointment, and to transfer the administration of the trusts created by the will of Judge Richardson to the equity court in the District of Columbia.

The appellants desire neither to compel Mr. Richardson or Mr. Drury to account further to the Massachusetts court, nor to complain of the surrender of jurisdiction by the Massachusetts court to the District Court.

The appellants do, however, seek to compel Mr. Drury to comply with the terms imposed, expressly and impliedly, by the Massachusetts court and by the equity court, as conditions to the transfer of the accountability from Massachusetts to the District of Columbia.

Those terms were that all the property whereof the deceased died seized and possessed should be accounted for to the equity court.

The averments of the bill and answer, and the order of April 1, 1899, are consistent only with such an accounting, and have already been quoted.

The petition of the executors to the Massachusetts court, dated in Washington, April 4, 1899, set up that the probate of the will in Massachusetts was a mistake that the will should have been probated in the District of Columbia, and prayed, not an accounting in Massachusetts, but that the executors might be "authorzed to pay over said trust funds to said trustees appointed in said Supreme Court of the District of Columbia as aforesaid, and that upon such payment they may be discharged from further responsibility by decree of this Court" (Rec., p. 86).

The decree of April 11, 1899, entered by the Massachusetts Court, recited "it further appearing to the satisfaction of the Court that the laws of the District of Columbia secure the due performance of said trust;" it described the petition as one "to pay over all the trust funds held in trust by them," and decreed that Richardson and Drury pay over "said trust funds to the said Samuel Maddox and Samuel A. Drury, Trustees as aforesaid" (Rec., pp. 87-88).

It was after these express declarations of reliance by the Massachusetts court on the supposed assumption by the District of Columbia courts of the entire burden of administering this estate, that there was presented to the Massachusetts court the final account of the executors, classifying into several grand totals the expenditures made by them in administering the estate and in performing the trusts created by the will, together with the consent and request for its allowance by the trustees, who had been appointed in the District of Columbia and whose due performance of their duties was, it appeared to the Massachusetts court, secured by the laws of the District of Columbia. On this consent, the Massachusetts court allowed the account forthwith.

When the circumstances of this allowance are thus considered, it seems incredible that it should be thought that to compel the trustees to account here for all of the funds and property of which Judge Richardson died seized would be to impeach any settlement made by the Massachusetts court, or to fail to give it faith and credit.

On the contrary, it would be a gross betrayal of the faith which the Massachusetts Court had in the courts of the District of Columbia, if the District of Columbia courts do not compel the accounting which was then waived by the Massachusetts court.

Hereinafter separate consideration is given to "What remains unaccounted for and outside the purport of the Massachusetts account" (infra, p. 72), and also to the fact that "The probate account and its allowance concluded nothing except the executor's discharge in Massachusetts" (infra, p. 74). What is said under those subtitles would be equally relevant here.

## THE TRUSTEES ARE ACCOUNTABLE FOR DIMINISHING THE ESTATE.

The Massachusetts Court had at least a right to assume that the trustees who were then vested with the right to all of the funds of the estate, without diminution, would be held accountable for any acts by them in diminution of the estate. The consent to the Massachusetts account was such an act, and for that act they were and are accountable to the District of Columbia courts.

It is error to say, as do the appellees and the courts below, in effect, that the trustees got nothing until April 25, 1899. They may, theoretically, have received no funds or tangible assets, but they did, as soon as they qualified in April 4, 1899, get the power, control and right of possession of the entire estate. On April 11, this right was conceded and recognized by a decree of the Massachusetts Court. They had the jus disponendi, even if they had not yet the possession, and they exercised this jus disponendi by endorsing their consent on the Massachusetts account. It is submitted that their responsibility and accountability to this Court for that act is inescapable and undischarged.

SUMMARY OF SUPPOSED BARS TO INQUIRY.

The appellants therefore confidently assert that no bar to a complete accounting is to be found in any of these matters, neither in the scope of the reference, in the settlements of the former accounts, in "acquiescence," nor in the allowance of the Massachusetts account.

What remains unaccounted for, and outside of the purport of the Massachusetts account.

To make even more plain the error of cutting off inquiry as to the trustees' acts prior to April 25, 1899, a consideration of the scope of the account allowed by the Massachusetts court is profitable.

The Massachusetts record purports to be only an account of the proceedings of the executors to that date. Conceding to it the greatest possible effect, it represents a marshalling of the assets of the decedent to pay contractual and testamentary charges upon his estate. Those assets consisted of personal property inventoried at \$328,124.57 (Rec., p. 85). Attached to the inventory was a schedule of real estate inventoried at \$39,800.

The account to which the trustees consented and which the court allowed, charges the executors only with the personal property, according to inventory, increased by the income, which includes \$7,218.96, "Receipts from real estate," but does not include or purport to account for the \$39,800 of realty (Rec., pp. 89-90).

No pretense is made that the executors account covered the executors' and trustees' dealings with the realty, except by the general claim of credit for a lump sum of \$49,705.31 spent for "repairs, taxes, prior mortgages, etc." What properties were acquired or freed from encumbrance by the expenditure of this sum is not shown.

Nor is it to be believed that the appellees or the courts below would, if their attention were properly arrested, hold that Mr. Drury, as a devisee in trust of real estate situate in the District of Columbia, was subject to be called to account for his acts by the probate court of Massachusetts, merely because the will was probated and the executor accounted there. As to this real estate, the Massachusetts account would have been inoperative even if it had been intended to apply.

The Court of Appeals, in another case, speaking with reference to the assertion that in the administration of the estate of a deceased person a foreign court could not decree the sale of land in the District of Columbia, said, "we deem it unnecessary to cite authorities in support of a proposition so elementary." (Plumb vs. Bateman, 2 App. D. C. 156, 166.)

This realty consisted of six pieces of improved real estate in the District of Columbia,—the homestead occupied by the family and five under rental,—one house and lot in St. Louis and one tract in Colorado (Rec., p. 85).

All of this was devised to Drury and Richardson and taken in charge by Drury at the death of Judge Richardson on October 19, 1896. The Massachusetts probate court had no jurisdiction over Drury with relation to it. The bill in this cause demanded an accounting of it. The answer submitted Drury as ready to account. The order of reference of October 18, 1899, directed an accounting.

No accounting has yet been rendered of the period prior to April 25, 1899. Yet the court of appeals fails to distinguish this from the personal estate in the possession of the executor and holds that the supposed adjudication of April 25, 1899, puts an end to all accounting for acts prior to that date.

According to the bill, the answer and the opinion of the court of appeals, there was even other property in respect of which no attempt has been made to account.

The bill (par. 6, Rec., p. 7), avers that Judge Richardson had in Massachusetts "one or two parcels of unproductive real estate of trifling value."

The answer of Drury admits in Massachusetts "one or two pieces of real estate of little value" (Rec., p. 15).

The court of appeals, after having put into the mouths of the appellants the useless argument that the Massachusetts court had no jurisdiction to probate the will, proceeds to demolish it by observing "it appeared that the testator had some real estate in Middlesex County, Massachusetts, and this gave jurisdiction," etc. (Rec., p. 159).

Mr. Drury, who took oath to the completeness of the inventory, does not mention this property. Despite its location in Massachusetts, this real estate also is eliminated from this executors' account, which is now argued to be a complete accounting to its date.

THE PROBATE ACCOUNT AND ITS ALLOWANCE CONCLUDED NOTHING EXCEPT THE EXECUTOR'S DISCHARGE IN MASSACHUSETTS.

The erroneous conclusion of the courts below has been so apparent, even assuming the Massachusetts account to be operative and conclusive, that it has not been necessary to state the appellants contention as strongly as the facts warrant.

The truth is that the Massachusetts account may be wholly disregarded, so far as the present accounting is concerned.

This conclusion seems to appellants to be inevitable upon the facts. It was but a formal consent allowance. The parties entitled to the residue, the trustees, had consented, and their consent left nothing for the Court to do except to recite the consent and carry into effect the desire of all parties concerned by formally passing the account.

If it had not been for the order to transfer the property and administration to the District of Columbia, this consent and formal approval would have been impossible, for then the parties entitled to the residue would have been the beneficiaries, who were infants, and despite whose consent the Massachusetts court would have been obliged to examine the account.

That a trustee has no power to bind a trust estate by his consent to an uncontested order which adversely affects the interests of his beneficiaries, whose interests have not been represented to or considered by the court, is well settled on the authorities.

In Mallory vs. Clark, 9 Abb. Pr. Rep. (N. Y.), 358, a sum due a former trustee was secured to him by a judgment confessed by his successor, under the direction of an equity court. The court, per Ingraham J., held the procedure improper, and said:

"I find, on examining these proceedings, it is not stated that the infants were represented, or in anywise had a part in settling the amount due to the trustees. Mr. Chatfield, as guardian to the infants, had notice of the proceedings for the change of trustee, but the settlement of the accounts of the plaintiff was not made before the referee named, but appears to have been made by the trustee and some of the parties in interest, who were of age.

"If this be so, the account should be adjusted before the referee, and after the balance is ascertained, the former order should be amended, so as to direct, etc."

In Mallery vs. Quinn, 88 Md., 38, decided by the Maryland Court of Appeals in 1898, Henry W. Clagett was the sole surviving trustee of two trusts, one designated as the Mrs. Contee trust and the other as the Elizabeth Bowling trust. Jemina Bowling in 1897 borrowed three thousand dollars from Roberts and Clagett. the then trustees of both trusts; which debt was owned by both trusts, a single bill for one thousand five hundred being given each. In 1894, Jemina Bowling was a distributee of the Elizabeth Bowling trust and entitled to a payment in excess of this three thousand dollars; she had no interest whatever in the Contee trust. She petitioned the Circuit Court for Prince George's County in the cause in which the trusts were administered that Clagett might be empowered to release the three thousand dollar mortgage and charge the amount against the funds payable to her out of the Elizabeth Bowling trust funds. Clagett, who was sole surviving trustee under both trusts, subscribed his assent to passage of order prayed for, and on May 5, 1894, an order was

entered authorizing him to release the mortgage as prayed. The following day Clagett executed the release.

Ultimately in 1896 Clagett was found to be a defaulter to both funds.

In 1896 in same cause the beneficiaries of the Mrs. Contee trust filed the petition now considered to set the order of May 5, 1894, aside.

The court said (p. 45):

"The order of May the fifth was obviously, in so far as the beneficiaries under the Contee trust were concerned, purely ex parte. Not only was no notice given but no possible opportunity to be heard was afforded. The petition was not filed until after the order appended to it had been signed. . . . It depletes a trust fund of an investment without cause; and in fact releases Mrs. Quinn from the obligation to restore to the Contee trust estate . . . money which she had actually borrowed from that estate. There was not the slightest justification for the passage of the order, and it cannot be doubted that the Judge who signed it never would have sanctioned it if he had been apprised of the fact that Clagett was, at the time, insolvent and a defaulter and that the cestuis que trustent were ignorant of the application made to him. There was, confessedly, no hearing on the merits of the petition on which the order was founded. The fact that it strips a trust fund of an investment without consideration and to the certain prejudice and injury of that fund, conclusively demonstrates that it ought never have been signed."

The absurdity of treating the order of allowances more than a transfer of the assets and responsibility to that the executors had delayed for another month, or for two months, or for a year, and had meantime received and expended some of the property for which they have been held accountable here, and then had filed an account in Massachusetts which should have had on it the assent of the trustees. The trustees would be as much relieved by such an account and approval as they were by the account and approval which took place.

According to the appellees, the trustees had it in their power to prolong their period of non-accountability indefinitely, subject, perhaps, to the coming of age of the beneficiaries, and their being able to protect themselves.

THE FAILURE TO ACCOUNT IS IMPORTANT; THE TRANSACTIONS WERE NUMEROUS.

Some indication is given of what Mr. Drury as trustee did between the death in 1896, and the beginning of the trustees' account in 1899 by these entries in the consent account filed in the probate court to cover this period:

Also in the recital of the matters upon which the \$18,800 is reported as the "expense of administration," for there appears this statement, "the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and other sources of \$58,168.94, the payment of about \$50,000

for repairs on real estate, the taking up of prior mortgages, taxes, etc."

At no time and to no court have the executors or the active executor or the trustees revealed the items which go to make up these totals.

Some transactions, presumably included in these items, are set out in the trustees' statement filed by the auditor with his report as "Auditor's Exhibit, No. 3" (Rec., p. 96). In this statement is a list of the real estate and a summary of the transactions in connection with each piece, to support the trustees' claim for compensation.

There are thirty-one parcels of real estate enumerated in this list (Rec., p. 118).

Among these 31 are included 4 out of the 8 mentioned in the inventory (Rec., pp. 85, 118, 119).

Including these 4, there are 18 out of these 31 which were acquired prior to April 25, 1899; or to put it differently, excluding these 4, there are here enumerated 27 pieces of real property in the District of Columbia, all acquired by Mr. Drury out of the personal estate; out of which 27, more than one-half, or 14, were acquired during this period from the death to the date of the Massachusetts account.

It becomes plain, then, that Mr. Drury, the active executor and trustee prior to April 25, 1899, converted a large portion of the personalty into real estate during the period for which he is now held not accountable.

At least one parcel of this real estate seems to have been acquired by Mr. Drury even before the inventory of February 23, 1897. According to this statement Lots 41 and 42, Square 107, being 1824-1826 L Street, Northwest, were acquired by foreclosure in January, 1897 (Rec., p. 120). So far as can be ascertained by the scanty traces of these transactions, this is the only parcel which the estate owned in February, 1897, in addition to the eight parcels which Mr. Drury then swore constituted the "Real Estate in Detail" (Rec., p. 85).

#### POINT II.

The Trustees' failure to account in this cause for the specific fund of \$18,800, which they withdrew from the trust funds, and then procured to be allowed to the Executors by the Massachusetts probate decree of April 25,1889.

The one item that is most conspicuous of the trustees' transactions during the period unaccounted for is the item of \$18,800 "expense of administration" (Rec., p. 90).

This item is rightfully conspicuous because of the circumstances and time of its insertion into the executors account, and it became accidentally conspicuous by the oversight of the trustees in making up their first account to the equity court (Rec., p. 98).

The circumstances of its insertion have already been set out herein (Supra, pp. 31-36).

Little comment is needed to demonstrate that if the Massachusetts probate court read or considered the account or regarded anything except the trustees' consent and the expected full accounting in the District of Columbia, that Court was grossly deceived by those who prepared this account.

The account purported to carry not a penny of compensation.

Yet out of this item of "Expense" allowed to the executors, the active one of them was to receive, it was understood, \$14,600, the inactive one was proffered \$1,000 and, though he refused it himself, did not see that it was restored to the beneficiaries.

This deception was doubtless induced by the rule of court printed conspicuously at the top of the Massachusetts account form, which refers to section 2 of Chapter 150 of the Revised Laws of that Commonwealth:

IX. "No executor or administrator shall receive any compensation by way of a commission upon the estate by him administered but shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the court in each case may deem just and reasonable. The account shall contain an itemized statement of the expenses incurred, and shall be accompanied by a statement of the nature of the services rendered and of such other matters as may be necessary to enable the Court to determine what compensation is reasonable" (Rec., p. 113).

The mistake which the trustees made of supposing that their account should begin from April 1st, and include this amount, was indeed a natural one, as from April 1st, they were as truly in possession of this fund as they were on April 25th. Mr. Drury had held it as executor. He and Mr. Maddox, the other trustee, not he and Mr. Richardson, the other executor, were in the Sunday conference which allotted this \$18,800 to be divided. (Supra, p. 32.)

All the reasons which compel an accounting of the estate from the death to April 25, 1899, apply to the failure to account for this \$18,800, and in addition there is the significant element of large personal profit. Some court ought to decide whether Mr. Drury was then entitled to \$14,600 as compensation, and Mr. Maddox to \$1,500 as a legal fee. No court has yet decided. No court has had the question before it. Even the Massachusetts formal and consent decree was obtained by misrepresentation.

The Court of Appeals of Virginia had occasion in the case of Miller vs. Holcombe's Ex. et al. (9 Gratton, 665), to consider a compromise of a litigation, consented to by a trustee, out of which the trustee obtained a profit, and the opinion delivered by Lee, J., concurred in by all of Judges of that court, is quite applicable here. Holcombe was a trustee, constituted as such by a deed of trust from Harrison. Harrison while still in control of his own affairs, had procured a decree rescinding a contract to purchase a tract of land from Calloway, on the ground of a defect in the title. Calloway had appealed from the decree. Holcombe, coming into control of the litigation as trustee, settled the case by consent of himself and Calloway, taking the land himself, and eventually realizing a profit. The Court said, (p. 677):

"This profit, it is insisted, should be carried to the credit of the trust fund; while it is contended on the part of Holcombe, that this transaction was a purchase by him individually of the land from Calloway; and that he is entitled to claim the benefit of it as such. And the Circuit Court sustained the pretensions of Holcombe in this respect. "It is a well settled doctrine that where a trustee or other person standing in a fiduciary capacity, makes a profit out of any transactions within the scope of his agency, that profit will belong to the cestui que trust. . . . And it seems to me that Holcombe was brought in the transaction in question, within the influence of the rules on the subject. He availed himself of his office of trustee to make this compromise: the thing compromised was the decree in favor of Harrison, part of the trust fund. . . . .

"The principal on which the prohibition to one standing in a fiduciary character to deal with the trust subject with reference to his own individual interests, rests, is that not only would it be contrary to the design under which he had obtained control of the subject, but he would be placed in such a situation as that his interests might, in reference to the conduct of the trust, by possibility come into conflict with those of the cestui que trust. 2 Spence's Eq., 299; 2 Fonb., 189. And this case furnishes a most apt illustration of this principle. It will be remembered that at the time this compromise took place, the amount due from Calloway to Harrison was unascertained, depending upon an account ordered by the court to be taken of the amount paid by Harrison, upon the purchase, on the one hand, and the rents and profits of the property during the time it was held by him, on the other. Now in this state of the case, it was Holcombe's bounden duty to see that the account was taken correctly, and that the full amount paid was allowed, and not more than the just value of the rents and profits charged against it so as to make the net balance accruing to the fund as large as it might be. But after the compromise, as he is to pay according to his account, only what is actually due to the trust fund, it of course becomes his interest to reduce the amount as much as possible; and thus that very conflict between duty on the one hand and interest on the other is brought about, which the court of equity by its rules, seeks to avoid.

"It is vain to say that the arrangement was a judicious one, yielding more to the fund in the credit actually given, than it was really entitled to. The Court will not go into that inquiry, but requires that the whole profit yielded shall be accounted for."

The application of this sound expression to the present case is of course obvious. As trustees, it was the duty of Drury and Maddox to see that the allowance of "expense," which they knew meant "compensation," was no larger than was proper. But, inasmuch as the larger it was the more was to be received by them, it became to their individual interest to increase this allowance, and "thus that very conflict between duty on the one hand and interest on the other is brought about," which the appellants claim compels an examination into the propriety of their consent to this allowance.

The trustees, as trustees by virtue of the authority and title vested in them by the equity court in this cause, made the withdrawal of this fund possible by their consent. For signing that consent they are as truly accountable to this court as they would be had they signed a check as trustees, for the effect was the same.

#### POINT III.

The trustees' accountability for the profits realized by Mr. Drury from sales of notes to the trust estate.

The appellants assigned as error the discharge of the appellees as trustees without taking into account the fact that one of the appellees had made profits out of his dealings with the trust estate, and without directing an inquiry into the profit derived from the transactions of the partnership of which he was a member, with the trust estate, in the nature of sales to that estate of negotiable paper bought at a discount by this partnership.

The appellants further assigned as error the holding of the auditor and the courts below that the making of this profit was immaterial with regard to the right of the appellees to compensation, and with regard to the amount of that compensation.

THE APPELLEES SEEK TO SEPARATE THE PROFITS FROM THE DEALINGS WITH THE TRUST ESTATE.

The appellees have not contended that these transactions were not reviewable in this accounting. The court of appeals held that:

"Dealings with the partnership of Arms & Drury by trustees, one of whom was a member of the partnership, call for the closest scrutiny of each and every such transaction" (Rec., p. 164).

The rule forbidding a trustee to make personal profits out of his dealings with the trust estate is not directly attacked either by the appellees or the Court of Appeals. They also admit that Arms & Drury dealt with the trust estate; but have contended and held that no loss thereby

came to the estate and that no profit thereby came to Mr. Drury.

The appellants contend that Mr. Drury did thereby profit, and that this profit must be accounted for, irrespective of loss to the estate; and further that, as the trustees defend against further accounting upon the claim that no loss came to the estate by their dealings with it, it is incumbent on them to prove that fact, and this they have not done.

All of the appellees' contentions on this point were adopted by the auditor and the court of appeals.

These tribunals held that these profits were made out of that part of the transactions in question which preceded the dealings with the trust estate, viz, in the purchase of paper subsequently sold to the trust estate; and that no loss came to the estate, inasmuch as the trustees assert the estate eventually received in each case the face value of the notes bought from Mr. Drury and his partner.

As to the making of profits by the trustees, their contention was thus stated by Mr. Drury (Rec., p. 66):

"I should say that the profit from the sale of these notes was nothing; the profit from the purchase of these notes was something."

This conclusion is adopted by the auditor who states (Rec., p. 42):

"No profit was made by the firm of Arms & Drury in the sales of the notes to the trustees.
. . . The objection narrows itself to a claim that Drury should . . . make a gift to the estate of profits on his individual moneys, to which the estate is in nowise entitled."

The Court of Appeals comes to the same conclusion in these words (Rec., p. 164):

"We do not think that Drury, under any principal of equity, can be called upon to surrender to his beneficiaries his profit made in previous transactions with other persons and at their expense, simply because he and his co-trustee subsequently purchased the paper in the securing of which those profits had been made, and in which purchases no profit was made, or expected to be made, at the expense of the estate."

The error which appellants most confidently assert is contained in these statements of the trustees and the court below is not one of fact, for it is but a conclusion ill-founded upon the facts which are so conspicuously admitted in the record.

THE PROFITS WERE MADE AND REALIZED UPON THE SALE TO THE ESTATE.

The fundamental error is embodied in the above quoted statement of Mr. Drury; for the transactions of Mr. Drury's partnership were not completed when the purchase was made. The partnership traded,—it bought to sell. The value of the notes so traded in, was at all times a matter of opinion, founded upon the rate of interest they bore and the risk involved. Mr. Drury's business was the buying of such notes at what he and a vendor considered them worth and selling them at what he and a purchaser thought them worth. When he bought them he had not realized a profit, nor did he until he found a purchaser who thought them worth more than he had paid for them, and had received from that purchaser the sale price so agreed upon. It was neither

by the purchase alone nor the sale and payment alone that profit was made, but by the sum of the two transactions.

The vice of the selling transactions now criticised was that here his opinion of the value was matched not with a stranger, but with his own in a fiduciary capacity. It does not matter what is the court's opinion as to whether he did or did not exercise the same purchasing judgment in his fiduciary capacity that he would have exercised if he had not been at the same time, for himself, exercising selling judgment. The policy of the law is to credit the trust estate with what profit he thus made for himself.

Furthermore, it is obvious that in purchasing such notes on his own behalf, Mr. Drury, because he was trustee and controlled trust funds, knew when funds of the trust would be available with which to take off his hands these notes. The trust estate as a prospective purchaser possessing cash was necessarily a factor in his determination to purchase notes. No one in his situation, with the highest of motives, could have forgotten that there awaited a ready sale for his discounted purchases.

IT IS NOT CLEAR THAT THE TRUST ESTATE LOST NOTHING.

If a profit did result to the trustees, it is as a matter of law immaterial whether or not a loss resulted to the trust estate.

No testimony was introduced to support the assumption that the estate lost nothing. Not one transaction was traced. The assumption rests merely on the trus-

tees' assertion that the estate realized in each instance face value on the notes.

As a matter of fact, however, it does not follow that because the estate realized face value on the notes, it lost nothing when it bought. The value of these notes when the estate bought them was a matter of opinion; their value was not necessarily their face value. Therefore, to determine whether there was a loss, the values, considering the interest they bore and the risk involved at the time of purchase, must first be determined, for a comparison of value and price paid is the only test which could determine whether there was loss to the estate in the purchase of the notes.

No impartial determination was made of their value when they were sold to the trust estate, because Mr. Drury participated in that determination, and his interests were adverse.

The fact that face value and interest at the face rate were ultimately realized does not alter retroactively the value at the time of the purchase. It may be that the estate was merely fortunate in realizing ultimately more than the real value of these notes had been at the time of their purchase; or it may be that considering the risk and rate of interest the estate should have realized a greater return on its investment. Certainly the determination of a trustee whose personal interests were adverse is not conclusive of the fairness of the purchase transaction.

The estate lost at least one thing to which it was entitled, the disinterestedness and single mindedness of its trustee.

THE PRINCIPLES CONTENDED FOR BY APPELLANTS HAVE BEEN CLEARLY STATED BY THIS COURT.

All of the above considerations, which would be more apt if the principles involved in this case were novel, would be quite superfluous except for the surprising acquiescence of the courts below in Mr. Drury's theory that his profits were in purchases, not sales, because the sales were at face value, and that the estate could not complain because, they said, it lost nothing. The fact that his sales to the trust estate were for sums in excess of what he paid for what he sold, is, upon the settled doctrines of this court, a sufficient answer to this theory.

In Michoud vs. Girod, 4 How., 503, decided in 1845, the familiar case wherein an executor had, through a third party, purchased from himself as executor the property of his testator, and the beneficiaries years afterward brought a bill in equity to obtain an accounting of the transaction, this court said (p. 553):

"It matters not, in such a case, whether the sales are made with or without the sanction of judicial authority, or with ministerial exactness. The rule of equity is, in every code of jurisprudence with which we are acquainted, that a purchase by a trustee or agent of the particular property of which he has the sale, or in which he represents another, whether he has an interest in it or not,—per interpositam personam,—carries fraud on the face of it."

"The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self-interest and integrity. It restrains all agents,

public and private; but the value of the prohibition is most felt, and its application is more frequent, in the private relations in which the vendor and purchaser may stand towards each other. The disability to purchase is a consequence of that relation between them which imposes on the one a duty to protect the interest of the other, from the faithful discharge of which duty his own personal interest may withdraw him. In this conflict of interest, the law wisely interposes. It acts not on the possibility, that, in some cases, the sense of that duty may prevail over the motives of self-interest, but it provides against the probability in many cases, and the danger in all cases, that the dictates of self-interest will exercise a predominant influence, and supersede that of duty. It therefore prohibits a party from purchasing on his own account that which his duty or trust requires him to sell on accouunt of another. and from purchasing on account of another that which he sells on his own account. In effect, he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buver on his own account, are directly conflicting with those of the person on whose account he buys or sells" (p. 555).

In the case of United States vs. Carter, 217 U. S., 286, decided in 1910, the same doctrines were adhered to and applied in the face of contentions similar to those here made.

Carter, the defendant, was an officer of the United States in charge of certain public works, and received from the contractor a certain proportion of his profits. It was contended there, as here, that it did not appear that the principal had lost anything by the agent's independent dealings with his trust. The Court said (p. 305, et seq.):

"If it be once assumed that the defendant Carter did secretly receive from Greene and Gavnor a proportion of the profits gained by them in the execution of the contracts in question, the right of the United States in equity to a decree against him for the share so received is made out. It is immaterial if that appears whether the complainant was able to show any specific abuse of discretion, or whether it was able to show that it had suffered any actual loss by fraud or otherwise. It is not enough for one occupying a confidential relation to another, who is shown to have secretly received a benefit from the opposite party, to say, 'You can not show any fraud, or you can not show that you have sustained any loss by my conduct.' Such an agent has the power to conceal his fraud and hide the injury done his principal. It would be a dangerous precedent to lay down as law that unless some affirmative fraud or loss can be shown, the agent may hold on to any secret benefit he may be able to make out of his agency. The larger interests of public justice will not tolerate, under any circumstances, that a public official shall retain any profit or advantage which he may realize through the acquirement of an interest in conflict with his fidelity as an agent. If he takes any gift, gratuity or benefit in violation of his duty, or acquires any interest adverse to his principal without a full disclosure, it is a betraval of his trust and a breach of confidence, and he must account to his principal for all he has received.

"The doctrine is well established and has been applied in many relations of agency or trust.

"Thus, in Aberdeen Railroad Company vs. Blaikie Brothers, 1 MacQueen's Appeal Cases, 461, 472, it was applied to a contract of a director dealing in behalf of his company. Lord Chancellor Cranworth, in respect to the general rule, said:

"'It may sometimes happen that the terms on which a trustee has dealt or attempted to deal with the estate or interests of those for whom he is a trustee, have been as good as could have been obtained from any other person—they may even at the time have been better.

"But still so inflexible is the rule that no inquiry on that subject is permitted. The English authorities on this head are numerous and uniform.

"'The principle was acted on by Lord King in Keech vs. Sanford, and by Lord Hardwick in Whelpdale vs. Cookson, and the whole subject was considered by Lord Eldon on a great variety of occasions,"

See, also-

II Pomeroy's Equity Jurisprudence, secs. 1675, 963, 958.

White vs. Sherman, 168 Ill., 589, 611.

Jarrett vs. Johnson et al., 216 Ill. 212, 219, 220.

Bay State Gas Co. vs. Rogers, 147 Fed. R., 558.

City of Findlay vs. Pertz. 66 Fed. R., 427,435.

#### POINT IV.

The performance of the trust imposed upon the trustees by the decree of their appointment is not completed, because a part thereof, called the "Eliza C. Magruder, trust" remains unexecuted, and the trust property remains in the possession of the trustees.

The Court of Appeals held that the decree of the equity court was wrong in one particular, that is, in that it apparently terminated the portion of the trusts administered by the appellees under the decree of April 1, 1899, which was for the benefit of Eliza C. Magruder for her life.

Attention is therefore only briefly called to the clause in the Eliza C. Magruder declaration of trust, executed by Judge Richardson, as follows:

"Upon my decease, all the trusts, powers, duties, obligations and discretions vested in me by said deeds and this declaration are to vest in and be executed by my executor or executors or whosoever settles my estate in the same manner as they vest in me" (Rec., pp. 21-22).

Undoubtedly the persons in whom these trusts were vested when the equity court on November 15, 1910, entered the order discharging the appellees as trustees, were the ones embraced in the description "whosoever settles my estate;" and the persons then settling the estate of Judge Richardson were the appellees.

The appellees had not discharged all of the trusts created by the will of Judge Richardson until they had

discharged these Eliza C. Magruder trusts, for it was only to execute the trusts created by the will that they were appointed by decree of the equity court; and thereunder they immediately assumed and without interruption continued to exercise the powers vested in Judge Richardson under the Eliza C. Magruder trust.

The order appointing the trustees therefore remains in part in force, and it is indisputable that the trustees should not be finally discharged from their duties thereunder and their final account thereunder can not be stated.

Judge Richardson certainly did not contemplate a final discharge of the trustees who should settle his estate until the Eliza C. Magruder trusts were fully administered and he certainly did not contemplate that the trustees who should settle his estate should be compensated as for a task *completed* with honor and integrity, until the Eliza C. Magruder trusts should be fully administered.

#### POINT V.

The erroneous allowance of compensation to the trustees and the erroneous fixing of the amount thereof.

The appellants contend, first, that the allowance made was excessive, because it was based upon an erroneous principle and upon of a misapplication, of the principle adopted, to the facts of the case, and second, that no compensation whatever should be allowed to the trustees, because of the mal-administration of the trust.

THE SERVICES FOR WHICH COMPENSATION WAS CLAIMED WERE NOT OF A CHARACTER TO MERIT THE AMOUNT ALLOWED.

There can be no dispute of the facts that the auditor and the court of appeals based their findings as to the amount of compensation upon the assertions made by the trustees and contained in the unsworn statement signed by them and designated Auditor's Exhibit 3 (Rec., pp. 96-128).

It is the multiplicity of the items there enumerated that appears to have impressed the auditor and the court of appeals. Summaries contained in this statement, purporting to show the numbers of notes, payments, investments and reinvestments, were copied by the auditor and again copied by the court of appeals in its opinion as showing the right of the trustees to claim the compensation allowed (Rec., pp. 44, 155-156).

The services so rendered by the trustees, excepting the professional services for which Mr. Maddox was separately paid, were the services to which importance seems to have been attached, and were conspicuous only because of the multitude of small transactions involved. These transactions were carried on by the in large measure clerical force of the firm of Arms & Drury, and for their payment the trustee's commissions of Mr. Drury were covered into the funds of that firm (Rec., p. 66).

It is conceivable that an appropriate commission on the *income* for its collection may be properly increased because of the magnitude of the clerical services involved; but a commission was here claimed and allowed on the corpus or principal of the estate. Such a commission is to be allowed, if at all, in consideration of the care and diligence required in preserving intact and undiminished the principal of the trust estate. To determine whether such a compensation is due the clerical labor involved is of little consequence.

Furthermore, the principal of this trust estate was not preserved intact and undiminished, as appears from the summary statement of the results of this trusteeship hereinbefore set out (supra, pp. 45 et seq.).

The appellants submit that little foundation has been laid for claim of a percentage on the principal for the care of this trust estate.

The amount, \$313,321.34, which the auditor fixed as the basis for an allowance of 5% on the principal personal estate, was erroneous.

Assuming that a commission is to be allowed, of *some* percentage, on the corpus or principal of the trust, it is, the appellants submit, demonstrable that the appropriate sum to be adopted as the value of that principal is less than \$313,321.34.

The most conspicuous error in the method by which this sum is arrived at is that it is based upon the amount of the personal estate received by the trustees, not the amount distributed to the beneficiaries.

The auditor himself elsewhere in his report states that the face or apparent value of the estate when received by the trustees was inflated and untrue because of the character of the property in which it was invested. He says, "When the estate was delivered to the beneficiaries it may be said that practically all of it consisted of the real estate before mentioned, and first trust notes well secured, in contradistinction to the negligible character of the estate when it was received" by them (Rec., p. 45).

Furthermore, it is certainly obvious that if the intention is now to compensate the trustees for their care in the preservation of the principal of the trust estate by a commission on that principal, it is the estate which they have succeeded in preserving which should be the basis of that commission. What they have preserved is what they have turned over to the beneficiaries, not what they have received.

Another error results from the method of arriving at this \$313,321.34. It is not arrived at by adding together the several parts of the whole trust estate as they existed at any given date. Contained in it are the value of the personal estate in 1899 and the value of the proceeds of sales of real estate made at various times between 1899 and 1910.

The real estate from which the proceeds were derived had been, or a large part of it had been, bought from time to time curing this period of 1899 to 1910. The personal estate received from the executors in 1899 was used in purchasing this real estate and the amount of personal estate was thereby diminished. Yet no account is taken of this diminution in determining what is the gross principal estate.

A large part of the aggregate of \$313,321.34 was made up of this property which had been converted from personal to real estate and again from real to personal estate, and so was twice counted by the auditor. Some idea of the size of the resulting double commission is gained by considering the fact that the aggregate proceeds of sale of real estate included in the total were \$62,474.94 (Rec., p. 142), and that of the list of thirty-one pieces of real estate which from time to time had been the subject of investment of the trust funds, contained in the Auditor's Exhibit 3, thirteen were purchased after the executor's account was settled and of course out of the personal estate received from the executor, and of these thirteen several are there stated to have been sold (Rec., pp 118-125).

The auditor refers to this contention and recognizes the fact that he has allowed *some* double commissions, but he has "not felt called upon to further prolong the labor of the audit and increase the expense by recasting the schedules," because he finds upon an informal examination that only two pieces of real estate, the proceeds of which were counted as principal, were bought out of money turned over by the executors and already counted as principal (Rec., p. 44). If this is accurate, the appellants are at loss to understand out of what funds the other pieces of property which the present record on appeal shows to have been bought and sold during this period, were paid for.

In any event the appellants consider that it is error to pass over an admitted inaccuracy in the method of calculating this principal, even if the amount involved had been, as the auditor without a formal examination concluded, only \$6,050, on which five per cent would amount to about \$300 (Rec., p. 44).





THE PROPORTION OR PERCENTAGE OF COMPENSATION ARBITRARY AND BASED UPON NO EVIDENCE.

The amount of compensation to be allowed, as has already been stated, was ascertained by the auditor by a calculation of ten per cent on the income of the trust estate and five per cent on the principal of the personalty.

The choice of these percentages by the auditor was entirely arbitrary; there was no evidence whatever as to what percentages were appropriate, and there is no statute nor any rule of court in force in the District of Columbia which is applicable.

A decision and opinion of this Court was cited in the argument before the auditor and before the court of appeals and was relied upon, and seems now to be relied upon by the appellees of establishing the correctness of these percentages. The case of Barney vs. Saunders, 16 How., 535, decided in the December term, 1853, on appeal from the Circuit Court of the District of Columbia upon exception to the auditor's allowance of commission to trustees "of five per cent on the principal of the personal estate and ten per cent on the income."

In its opinion this Court said:

"The allowances made by the auditor in this case are, we believe, such as are customary in similar cases, in Maryland and this district, where the trustee has performed his duties with honor and integrity" (16 H., 542).

Assuming that after a lapse of over sixty years these rates of allowance remain "customary in similar cases

in Maryland and this District," it is certainly true now as it was then that such allowances are customary and proper only "where the trustee has performed his duties with honor and integrity."

And in that opinion the Court proceeds to state with clearness, emphasis and particularlity what is meant by the performance of a trustee's duty "with honor and integrity," and also to elucidate certain general principles of equitable jurisprudence and procedure, which are applicable to the present as well as to that case, and which, when applied, exclude the trustees from claiming any compensation whatever.

The principles of the case of Barney vs. Saunders which were considered by the appellees and the court of appeals to be controlling in fixing the amount of compensation are considered by the appellants as controlling in defining those duties which the appellees as trustees have failed to perform.

THE TRUSTEES ARE ENTITLED TO NO COMPENSATION WHATEVER BECAUSE OF THE MAL-ADMINISTRATION OF THE TRUST.

Portions of the opinion of this Court in Barney vs. Saunders are so applicable to the case at bar, as to suggest that the Court had in mind such a case as the present one. The Court said:

"While on this subject, we would take the opportunity to remark, on the impropriety of appointing persons to trusts, however high their personal character may be, who are allowed to pay from their right hand into their left; as where A, as administrator, has to settle an account with A as trustee; and B, as trustee, to deal with B as guardian. To instance the present case: Saunders, the trustee, whose duty it was to scrutinize the accounts of the administrator de bonis non, from whom they receive the trust estate, is himself appointed administrator, and thus left without a check, or any one to call him to strict account except his co-trustee, for many years, and until the ward comes of age. Weightman, the other trustee, is appointed guardian, being the only person who for many years could call to account the trustees for any negligence. mismanagement, or fraud. . . . That the persons appointed in this particular case were highly honorable men, is true; but the same rule should be applied in all cases" (p. 541).

Just this abuse is conspicuous in the present case. Mr. Drury as executor accounted to himself and Mr. Maddox as trustees, to the personal profit of both. The infant beneficiaries were represented only by a guardian ad litem, their father, whom the testator had excluded from the devolution of his property, and for whose interests their counsel, Mr. Maddox, also their trustee, Mr. Maddox, said he was more concerned than he was for their interests. And the entire situation was the creation, not of the testator's will, but of the co-operation of Messrs. Maddox and Drury and the guardian to control and use the trust estate.

As to compensation and in definition of the performance with "honor and integrity" which this Court says entitles a trustee to claim commissions at the rate herein allowed, the opinion continued:

> "But on principles of policy as well as morality, and in order to insure a faithful and honest execu

tion of a trust, as far as practicable, it would be inexpedient to allow a trustee who has acted dishonestly or fraudulently the same compensation with him who has acted uprightly in all respects. And there may be cases where negligence and want of care may amount to a want of good faith in the execution of the trust as little deserving of compensation as absolute fraud. If trustees, having a large estate to invest and accumulate for the benefit of an infant, for a number of years, will keep no books of account, make out no annual or other account of their trust estate; if they risk the trust funds in their own speculations; lend them to their relations without security; and in other ways show a reckless disregard of the duties which they have assumed, they can have but small claim on a court of equity for compensation in any shape or to any amount" (16 How., 542).

These expressions also are applicable to the present case.

Mr. Drury as executor, appointed in October, 1896, made "no annual or other account of his executorship," until in April, 1899, the administration was transferred to the District of Columbia. Under the doctrines of the case they invoke, he "can have but small claim on a court of equity for compensation in any shape or to any amount."

Yet in April, 1899, for his two years and a half of services, Mr. Maddox, as trustee, Mr. Drury himself, as trustee, and Mr. Maddox's friend, the guardian, allowed Mr. Drury \$14,600 for his services.

He then paid this fund "from his right hand into

his left," with the "understanding" that Mr. Maddox was to have a share of it.

Assuming that Mr. Maddox, as counsel for the children and as trustee, did not intentionally betray his trust or intentionally deceive the Massachusetts court by designating as "expense" this item which concealed the compensation, but did so merely through negligence, was this not the "negligence and want of care" and the "reckless disregard of the duties which they have assumed," which under the doctrines of this opinion destroy his claim for compensation?

Does not his explanation, that he relied on Mr. Weir, only increase his responsibility, when it is remembered that Mr. Weir represented the Executors and received one thousand dollars of this allowance for himself? Was it not want of care under the circumstances to rely upon Mr. Weir's judgment?

Mr. Drury has made no report to any court of his transactions by way of purchase, management and sale of real estate during the period between Judge Richardson's death and the beginning in April, 1899, of the trustees' accounts filed herein.

Mr. Maddox, who instituted this suit as counsel for the infant beneficiaries avowedly to secure such an accounting, appears to have been content merely to obtain control of the estate by the transfer of its administration here and his own appointment.

All adversary interest seems to have vanished when, by the consent of Messrs. Drury and Maddox, and of no one else, they were appointed trustees herein, charged by the court with the duty, however, of obtaining possession of all the property whereof the said deceased died seized and possessed.

Nevertheless they were content to receive from Mr. Drury as Executor about one hundred thousand dollars less than the reported assets of the estate. Of this diminution \$14,600 were paid to Mr. Drury.

To accomplish this, they, almost immediately after their appointment, and without report or notice to the Court appointing them, united as trustees in an application to the probate court whose jurisdiction they had denied in their representations to the equity court, and recommended to the probate court the allowance of an executors' account which was designed to shut off further accountability in respect of the estate to that date.

The reasoning of the authorities which hold that an order entered on the consent of trustees can not be used by them against the cestuis que trust (supra, pp. 75-77, 82), compels the conclusion that their consent to this account was such a breach of duty as constituted gross infidelity to their trust.

Especially pertinent is the reasoning of the case of Miller vs. Holcombe's Executors, which has been quoted (supra, p. 82), wherein is so well described the conflict of interest which arises when a trustee "consents" for his beneficiary to his personal profit.

In that case a decree in favor of the cestui was described as a "part of the trust fund." Here, also, the decrees of both courts directing the transfer of all assets to this jurisdiction, were "part of the trust fund," to be realized upon by the trustees. They have not realized in full upon these decrees, but have given away a part of the

proper proceeds to themselves and others without account.

If the doctrines of that case and of Barney vs. Saunders are as sound and controlling as they are wholesome, the trustees here "have but small claim in a court of equity for compensation in any shape or to any amount."

This infidelity in the inception of the trusteeship is wholly inconsistent with a claim of the trustees for compensation, as were also the continuous dealings of the partnership of Arms & Drury with the trust estate.

The denial of the appellants' right to have ascertained the amount of the profit so made by Mr. Drury and Arms & Drury presents a striking parallel to the situation described by the Supreme Court of Massachusetts in Blake vs. Pegram (supra, p. 65), wherein that court said, in respect of the settlement of a guardian's accounts:

"The appellant claimed to be entitled to the profits, if any were made beyond the interest, from whatever use her money had been appropriated to. In order to ascertain whether such profits were made, the accountant was called upon to exhibit his books of account, and to disclose the mode in which the money had been used or invested. This he declined to do, denying the right of the appellant to investigate his private affairs, or to inspect his personal accounts.

"The appellant contends that, against a party who thus refuses to disclose the use he has made of his ward's money, it is fairly to be presumed that he has derived profits from its use, sufficient at least to compensate him for the care of it, so as to deprive him of the right to charge other com-

pensation; and this presumption is especially strengthened when, as in this case, the money was mostly received at a time when currency and gold were equivalent, or nearly so, and paid over in currency and specially invested for the ward after the currency had depreciated to less than one-half the value of gold. The Court adopt this position of the appellant, and hold that the guardian is not entitled to charge any commission in this account."

In view of what has already been said (supra, pp. 94-95) concerning the incomplete state of that portion of this trust known as the Eliza C. Magruder trust, it need only be added here, in the words of this court in Barney vs. Saunders, that the trust must be "performed," before a commission on the principal can be allowed. Surely it is only for a completed trust that this court intended approving such an allowance. So long as the trustees are to continue to act under the decree of April 1, 1899, their acts as a whole can not be reviewed and a compensation fixed.

#### Conclusion.

The decision of the court of appeals gives primary and predominating importance to the question, what recognition and what effect are to be conceded to the decree of the Massachusetts probate court of April 25, 1899, allowing the account of the executors, upon the duties and liability of the trustees to account to the equity court under the provisions of the decree of April 1, 1899, appointing them.

In its opinion and with reference to the report of the

auditor stating the final account of the trustees and determining their compensation, the court of appeals said:

"This report was based on the consideration that the administration and the responsibility of the trustees, under the appointment of that court, extended only to the net balance ordered to be delivered to them by the probate court" (Rec., p. 159).

Making further reference in its opinion to this report and to what it termed the "settlement" made by the probate court, "of the accounts of the executors and of the balance required to be delivered to the trustees" the court of appeals said:

"We think the auditor and the court were right, therefore, in refusing to review that account" (Rec., pp. 162-163).

The court of appeals supports its decision on the ground that the appellants are estopped "now to impeach the settlement" made by the probate court (Rec., p. 162).

The reasons why, upon the conditions recited and upon the facts disclosed by the record, the doctrine of equitable estoppel and of acquiescence have no applicability and can not be considered as a defence or a justification of or excuse for the conduct or attitude of the *trustees* in refusing obedience to the explicit and unrevoked decree of the court appointing them, have already been presented in this brief on pages 66 to 77, to which reference is respectfully made.

If this court shall, however, find that the decree of the probate court of April 25, 1899, and not the decree of the equity court of April 1, 1899, is to be considered as fixing the extent of the liability of the trustees to account to the equity court and the time when the duty and liability to account actually began, there will remain to be considered by this court the question of requiring of the trustees an accounting as to the profits realized by the trustee, Mr. Drury, from the purchase of notes by the trustees from Arms & Drury in the course of transactions in which Mr. Drury was really both buyer and seller.

The refusal of the auditor to require such an accounting and the necessity therefor and the right of the appellants thereto in the final accounting and as a prerequisite to the discharge of the trustees are presented in this brief on pages 85 to 94, and also on pages 63 to 66, to which reference is respectfully made.

There will also remain to be determined the question of the compensation to be made to the trustees for their services, which can not be finally ascertained and determined until their services have been completed, and until their trust has been fully and completely executed, and the question whether the trust can be considered completed and fully performed and their compensation determined while the part of their trust, referred to as the Eliza C. Magruder trust, remains unexecuted and the property belonging to the trust remains in the possession of the trustees and their accounts in respect of that property remain unsettled.

The view and contentions of the appellants on these questions, viz., the question of the non-completion of the Eliza C. Magruder trust and the question of the compensation due the trustees are presented in this brief on pages 94 to 107.

The judgment of the court of appeals of the District of Columbia should be reversed.

NATHL. WILSON, Of Counsel for Appellants.

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### IN THE

# Supreme Court of the United States

OCTOBER TERM, 1914.

No. 17.

ALEXANDER R. MAGRUDER AND ISABEL R. MAGRUDER Appellants,

215.

SAMUEL A. DRURY AND SAMUEL MADDOX, Trustees, Appellees.

## BRIEF FOR APPELLEES.

### STATEMENT.

Hon, William A, Richardson, Chief Justice of the United State Court of Claims, died October 19, 1896, leaving a last will and testament, in which he described himself as "a citizen and inhabitant of Cambridge, in the County of Middlesex and Commonwealth of Massachusetts, and having property in said county." In the seventh paragraph of the will he directs that, if the appointment of a guardian for his grandchildren should be necessary, "some Massachusetts man be selected for the trust;" that, in case of the resignation or death of his brother, George F. Richardson, named as executor and residing in Massachusetts, in his place "there be appointed a Massachusetts man," but that, in case of the death or resignation of Samuel A. Drury, who was a resident of the District of Columbia, where the testator had a large amount of personal property, consisting principally of second trust notes, "one of the best business men of Washington, like him," or one of the loan and trust companies, should be appointed in his stead. The will was probated in Massachusetts, letters testamentary issued to George F. Richardson and Samuel A. Drury, the executors named in it, who duly qualified and proceeded with the administration until March, 1899, a period of two and onehalf years. In the fall of 1898 an attempt was made by the State of Massachusetts to impose personal taxes, amounting to about \$7,500 annually, on the assets of the estate in the hands of the executors.

When knowledge of this assessment was brought to the attention of Dr. Magruder, father and guardian of the plaintiffs, counsel were employed and an original bill filed in this cause against Samuel A. Drury and George F. Richardson by the beneficiaries under the will by their father as next friend, alleging that the last domicile of the testator, notwithstanding the recitals of his will, was the District of Columbia, and that all of the assets and personal securities of the estate were in the keeping of Samuel A. Drury in the District of Columbia. The bill prayed that defendants might be enjoined from paying out of the estate any taxes to the State of Massachusetts; that an account should be taken of all the property and estate that had come into the hands

of the defendants as executors and trustees under the will, and that they might be required to file accounts from time to time and as often as might be necessary, showing the moneys received by them and the disbursement thereof. The fifth prayer of the bill was that, if George F. Richardson had filed his resignation as executor or trustee, as plaintiffs had been informed, then that some fit and proper person might be appointed in his place and stead. The original bill was filed December 31, 1898.

No further proceedings were had on the original bill, and, for the reason that George F. Richardson would not submit to the jurisdiction of the courts of the District (R., p. 77), an amended bill was filed, in March, 1899, naming Samuel A. Drury as sole defendant. This amended bill averred that George F. Richardson had declined to act as trustee (R., p. 8), and its prayer was that Drury might be enjoined from paying out of the estate any money for dues, taxes or other charges to the State of Massachusetts.

Mr. Drury answered the amended bill, neither admitting nor denying the allegations as to the last domicile of the testator, conceding that he had the entire custody and management of the assets and personal securities; stating that he was willing to "account in this honorable court, or in any other jurisdiction in that behalf," for all moneys and property received by him as executor and trustee, and that, as Mr. Richardson had declined to act as trustee, he was willing that some fit and proper trustee should be appointed in the latter's stead.

On April 1, 1899, a decree was passed in the cause (Rec., p. 16), appointing Samuel A. Drury and Samuel Maddox trustees to perform the trusts created by the will, "authorized and empowered to receive from the executors named in said will all of the property whereof the deceased died seized and possessed," upon giving bond in the penal sum

of \$25,000 each for the faithful discharge of their duties as trustees.

It will be noted that, although this decree (see record, pp. 16-17) contained a recital that it "appeared to the court that the late William A. Richardson was last domiciled in the District of Columbia," etc., it not only did not assume to vacate, or to attack, the administration proceedings in the Massachusetts courts, but, on the contrary, appointed "trustees," only, whom it authorized and empowered to receive "from the executors" the assets of the decedent. There was never administration in any other tribunal than the probate court of Massachusetts, the will was never admitted to probate anywhere else, and the title both of the trustees and of the beneficiaries, from that time to this, has rested upon the Massachusetts probate. It is, of course, further to be noted that, had the Supreme Court of the District of Columbia undertaken, in terms, to attack or annul the administration proceedings in Massachusetts, it could have no jurisdiction or power to render any decree which would affect the jurisdiction of the Massachusetts court in that regard, nor the duties or the accountability of the executors to the court of their appointment.

Under the Massachusetts statutes, the jurisdiction assumed by the court, so far as it depended upon the place of residence, could not be contested except by an appeal in the original case, or where the want of jurisdiction appeared on the record. Dallinger vs. Richardson, 176 Mass., 81. The jurisdiction is conclusively presumed, in that jurisdiction, in any proceeding involving the validity of any order or decree of the court or any proceedings thereunder, and the executors could not deny the validity of their appointment as executors.

It is apparent, therefore, that neither the proceedings which actually took place in the Supreme Court of the District of Columbia, nor any which could have taken place there, relieved the executors from their duty of accounting to the Massachusetts court for the assets which came into their hands as executors, under their appointment by it. They accordingly rendered such an account (Rec., pp. 88-91), which account was examined and considered by the Massachusetts court, and by it allowed (Rec., p. 89), on the 25th day of April, 1899 (Rec., p. 89).

On the 18th of October, 1899, an order was passed by the Supreme Court of the District of Columbia (Rec., p. 17), referring the cause to the auditor to ascertain and report the amount and character of the estate of which the late William A. Richardson died seized and to "state the account of the executors and trustees under the will of the said deceased."

If by this order it was intended to require the executors, who were George F. Richardson and Samuel A. Drury, to account, in this jurisdiction, for their administration of the estate as executors, so much of the order as contemplated such an accounting was necessarily void. In the first place, the court at no time acquired jurisdiction over Mr. Richardson, one of the executors, and, in the second place, it is well and conclusively settled, at least in the Federal courts, that executors are accountable only in the jurisdiction of their appointment. Vaughn vs. Northrup, 15 Pet., 1; Lewis vs. Parrish, 115 Fed., 285; Courtney vs. Pradt, 135 Fed., 218; S. C., 160 Fed., 561; Jones vs. Herbert, 2 D. C. App., 485, 496.

The auditor, accordingly, in his report filed December 19, 1900, stated the account of Maddox and Drury, trsutees, charging them with the "personal estate received from the executors" and with the moneys received by them subsequently, and crediting them with their disbursements. This account was approved in due course by the Supreme Court

of the District of Columbia, and was followed by five other successive references to the auditor and accountings by the trustees, for the several successive periods of their administration as trustees covered thereby. Alexander R. Magruder, one of the beneficiaries, became of age on January 17, 1904, and Isabel R. Magruder, the remaining beneficiary, attained her majority on the 28th day of April, 1907, neither of whom, by petition for review or application to the court of whatsoever kind, has questioned the propriety of the action of the auditor, in his said first report, in commencing the account of the trustees with their entrance upon the trust, and charging them, accordingly, with the assets received by them from the executors, pursuant to the decree of their appointment.

At page 72 of the appellants' brief, it is objected that, while the account of the executors, submitted to and allowed by the Massachusetts court, accounts for the receipts from the testator's real estate, it does not account for the real estate itself. Since it is nowhere pretended that the executors disposed of any of the real estate in question, it is difficult to see what they had to account for in respect to it other than the receipts from it. It further appears, at page 25 of the record, that three parcels of the real estate enumerated in the executors' inventory (Rec., p. 85) going to make up the \$39,800 of realty referred to in the brief, did not belong to the testator at all, but to the Eliza C. Magruder estate, of which he was trustee (see infra, p. 58).

It remains, by way of further statement of the case for present purposes, to inquire concerning the object of the orders of reference under which the last auditor's report was made, and the extent of his authority thereunder. These orders were two, namely: One of January 15, 1909, —"Ordered that this cause be, and it hereby is, referred to the auditor to state the account of the trustees herein as of

date January 17, 1909" (Rec., p. 27); and, the then auditor, James G. Payne, Esq., having in the meantime deceased, the further order of February 3, 1910 (Rec., p. 37), reciting his death and referring the cause to the auditor "to state the final account of the trustees and the distribution of the trust estate in their hands, and report such commission or compensation to the trustees as may be appropriate and proper," etc.

Both these orders of reference are, further, to be read in the light of the decree of July 9, 1909 (Rec., pp. 33-37), and of the proceedings which led to that decree.

These proceedings were, a petition filed by the two beneficiaries, the appellants, on June 16, 1909, the younger of them being more than two years past her majority, reciting the appointment in the case, on April 1, 1899, of Drury and Maddox as trustees, with authority "to receive from the executors named in said will" all of the property of the testator; the order of the Massachusetts court commanding them to pay over the trust funds to the said Drury and Maddox; the filing by the executors in the Massachusetts probate court of their first and final account and the approval thereof by the court, a copy of the inventory and of the said account of the executors showing the property received and receipted for by them as trustees being made an exhibit to the petition; that the trustees thereupon had taken into their possession the property and funds so received by them from the executors; the appointment of Alexander R. Magruder as an additional co-trustee by the order of the court of April 18. 1906, the fact that he had had no active participation in the management of the estate or the execution of the trusts; the filing and passing of the successive accounts of the trustees; the fact that Alexander Richardson Magruder was, under the will, entitled to receive the whole of his share of the estate, being beyond the age of 26; that Isabel R. Magruder, being beyond the age of 23 years, was entitled to receive one-fourth of the same, her remaining one-fourth to be held in trust until she should become 26 years of age; that a division of the assets into two equal parts, set out and described in Magruder Exhibit "C" and Magrude Exhibit "D," had been made; that Maddox and Dru v were desirous of surrendering their trust, and that the American Security & Trust Co. had been accordingly selected as the trustee in their stead to hold the onefourth of the estate which Isabel R. Magruder would not become entitled to receive until she was 26 years of age. followed by prayers that the trustees might transfer to Alexander R. Magruder his share of the estate, to Isabel R. Magruder the one-fourth of the estate which she was then entitled to receive, and that the American Security & Trust Co. might be appointed trustee in the place and stead of the then trustees with respect to the remaining undistributed one-fourth of the estate, etc., etc.

This petition was followed by the decree of July 9, 1909 (Rec., pp. 33-37), in effect directing that distribution be made as prayed, and concluding with paragraph "Fifth" (Rec., pp. 36-37), stating that the trustees had received and were in possession, as of January 17, 1909, of the proceeds of certain notes, aggregating \$11,187.78, directing that these proceeds be not distributed according to the agreed plan of division, but be retained until settlement of the trustees' accounts and the ascertainment of the amounts found to be due and payable to them for compensation, commissions and the costs of court, etc., the fund in their hands to be chargeable with such compensation and costs, any residue to be divided in accordance with Magruder Exhibit "D," the court retaining jurisdiction of the cause for the purpose of ascertaining the compensation due to the

trustees, respectively, the costs, and the property, if any, belonging to the estate remaining in their possession, as also, in respect to the undistributed one-fourth share of the petitioner, Isabel R. Magruder, etc.

Viewed in the light of this petition and decree, the object and purpose of the order of January 15, 1909, and of the supplementary order of February 3, 1910, made necessary by the death of the former auditor, are too obvious to require comment. The petition upon which they were based did not seek, and the orders of reference passed pursuant to it did not impose upon the auditor the duty, nor the slightest semblance of authority, to reopen the five successive audits which had already been had in the case, all of them ratified by the court, acquiesced in by the parties, and remaining unchallenged in the pleadings, by the petition, or otherwise, or to review, reverse or annul the action of the Massachusetts court, dealing with its own officers, and in like manner unassailed or attacked in the pleadings or elsewhere in the record.

To the report of the auditor under this reference (Rec., pp. 38-47), fourteen exceptions (Rec., pp. 129-131) were presented on behalf of Alexander R. Magruder and Isabel R. Magruder, the most intelligible and convenient method of considering which objections, it is believed, is the order in which they were made and are presented in the record, though a somewhat different arrangement is followed in appellants' brief. They may be summarized as follows:

I. To the allowance to the trustees of a commission of five per centum on that part of the principal upon which they have as yet received no commissions, and of ten per cent upon the income (Exceptions 1, 11).

II. To the allowance of a commission upon the principal estate received by the trustees, instead of upon the net amount of the estate delivered by them to the beneficiaries

(Exceptions 2, 3).

III. The failure of the auditor to consider, for the purpose of determining the compensation to which the trustees were entitled, the commission allowed Mr. Drury by the Massachusetts probate court for his services as executor (Exceptions 4, 5).

IV. The refusal of the auditor to charge the trustees with the alleged profits made by the firm of Arms and Drury, of which the trustee Drury was a member, in connection with certain real estate mortgages, which mortgages the trustees purchased from Arms and Drury as an investment of the trust funds (Exceptions 6, 7, 8, 9).

V. The refusal of the auditor to allow commissions or compensation to Alexander R. Magruder as one of the

trustees under the will (Exception 10).

VI. An alleged inconsistency of the auditor, in holding that he was without authority to reopen or reform the first account of the trustees, as reported by his predecessor and approved by the court, and yet finding that a tacit understanding had been arrived at by counsel that the account should be reopened, followed by an examination of it by him for certain purposes (Exception 12).

VII. The refusal or failure of the auditor to state an account by the trustees of the entire estate of the testator, including the account of the executors, under the Massachusetts administration, of which executors Mr. Drury was

one (Exception 13).

VIII. To the charging of the auditor's fee against the cash in the hands of the trustees (Exception 14).

The cause came before the court of first instance for final decree upon these exceptions only, and the case is here upon appeal from the action of the Court of Appeals in sustaining the action of the court below in overruling them.

It follows that only the questions raised by these exceptions were before either of the lower courts, or can be considered here.

#### I-II.

The first objection is to a five per cent commission on the principal of the estate and a ten per cent commission on the income, while the second objection is to the allowance of the commission upon the principal estate received and administered by the trustees, instead of upon the net amount or value of the estate delivered by them to the beneficiaries.

These objections constitute point No. 5 of appellants' brief, considered at pp. 95-110, where it is contended that the allowance was excessive and, further, that no compensation whatever should be allowed because of an alleged maladministration by the trustees of their trust.

The character and extent of the services are shown in the auditor's report (Rec., pp. 44-46). As is shown by the report and schedule of the trustees accompanying the auditor's report (Rec., pp. 96-128), the personal estate of the testator consisted in large part of doubtful, second trust promissory notes, more than three thousand in number. During the period covered by the first report of the auditor, there were 849 separate payments of principal and 937 separate payments of interest; during the period of the auditor's second report, there were 428 payments of principal and 1,105 payments of interest; during the period covered by the third report of the auditor, there were 360 payments of principal and 716 payments of interest, etc., etc., the number of payments being reduced in the successive accountings by the fact that the trustees, as they realized upon these doubtful, second trust securities, invested their proceeds in good, first mortgage interest-bearing notes, without the loss of a dollar during their entire administration. In addition, they were compelled to buy in, under the second trusts, some forty different pieces of "contract-built houses;" to keep them in repair, see after the rents, etc., etc. Measured by the amount of labor involved, as the auditor stated in his first report, a compensation of ten per centum upon income was inadequate (Rec., p. 19); and, it is submitted, the same is unquestionably true of a commission of five per centum upon the principal, collected in such a manner, and under such responsibilities.

2. In the second place, the rate of compensation in question, allowed by the auditor and approved by the court in each of the five preceding accounts of the trustees, is, in effect, a rate of compensation established in the case. It has been approved, in the present proceeding, by both the auditors, the Supreme Court of the District of Columbia, and the Court of Appeals of the District of Columbia. Nothing is offered to show that it was excessive in the preceding accountings, nor that it is so now.

3. In the third place, the rate in question, namely, ten per centum upon income and five per centum upon principal, was declared by this court to be a proper allowance as far back as Barney vs. Saunders, 16 How., 535, 541-2, a case going up from this District, and which has ever since been followed in proper cases, uniformly it is believed, in this jurisdiction, as seems to be recognized at page 57 of appellants' brief. If, as there stated, the maximum commission permitted, the auditor, the Supreme Court of the District of Columbia and the Court of Appeals have united in holding it to be a proper allowance in this case, and we submit were abundantly justified by the facts of the case in doing so.

With respect to the second objection, there are two answers, each of which is conclusive.

1. In the first place, there is no competent evidence in the case to show that there is the alleged difference, or any substantial difference, between the amount received by the trustees, and the amount turned over by them for the beneficiaries at the conclusion of their trust. The assumption that there has been a shrinkage is based upon a valuation of the real estate, made extrajudicially, for the purposes of division merely, by certain friends of the parties. Inasmuch as, with the exception of a country home purchased by the trustees for the beneficiaries upon the application to the court and with the consent of all concerned, no real estate was acquired by them except certain lots purchased at foreclosure sales under the second trust notes, held by the testator at the time of his death, it is difficult to see upon what theory the alleged shrinkage in real estate values, if any has really occurred, should be charged against the trustees, or made the basis of a reduction in their compensation.

2. With respect to the second objection, its theory amounts to this: If the assets of an estate are \$300,000, and its liabilities are \$150,000, the trustees, though charged with the management of and responsibility for the entire \$300,000, are entitled to compensation upon the net balance only, remaining after the obligations are discharged. If the liabilities exceed, or equal, the assets, they should receive nothing.

# ALLEGED MALADMINISTRATION AS A BAR 10 COMPENSATION.

A further objection to the compensation allowed is made under the fifth heading, at p. 101, et seq., of the brief for appellants, that the trustees should be denied all compensation because of an alleged maladiministration of their trust.

It is in the first place to be noted in respect to this objection, that it nowhere appears in the record. The petition of appellants (Rec., pp. 27-32), under which the final audit and other proceedings out of which the present appeal arises were had, though setting out the appointment of appellees as trustees in the cause, the statement by the executors of their account in the Massachusetts Probate Court and its approval of the same, accompanied by copies of both the inventory and of the final account of the executors, the petition expressly referring to the receipt of the trustees attached to that account as showing what property came into their hands as trustees (Rec., p. 28), that the appellees had from time to time submitted five successive accounts of their administration and that each of these reports had been passed by the auditor, makes no suggestion of maladministration, negligence, fault or default upon the part of the trustees, of any kind or character. This cause came before the court of first instance, and before the Court of Appeals, only upon certain exceptions to the sixth and final account of the trustees as reported by the auditor as above noted (and see opinion of the Court of Appeals, Rec., p. 54); which exceptions, though objecting to the rate of commissions allowed, point to no maladministration on the part of the trustees nor in any way indicate a contention that they have been guilty of conduct forfeiting their right to compensation, as it was necessary for them to do in order to raise a contention of that character. If appellants proposed to contend that the auditor erred in holding the trustees entitled to any compensation, that contention should have been brought directly to the view of the court in the form of the exception itself, exceptions to such reports being in the nature of special demurrers, requiring the particular error relied upon to be pointed out, without which they will not be considered. Dexter vs. Arnold, 2 Sum., 108; Story vs. Livingston, 13 Pet., 359, 366; Green vs. Bishop, 1 Cliff., 186, 191; R. R. Co. vs. Gordon, 151

U. S., 285, 290; Richardson vs. Van Auken, 5 D. C. App., 209.

In the second place, no such question was made below. As shown by the opinion of the Court of Appeals (Rec., p. 158; Magruder vs. Drury, 37 App. D. C., 519, 537). the exceptions relied on in that Court related (1) to the allowance of the 5 per cent commission on principal and 10 per cent on income, (2) to the \$18,800 item allowed by the Massachusetts Court, and (3) to alleged profits made by the trustees in the purchase of notes for investmentnamely, an alleged profit realized by one of the trustees, Mr. Drury, from the fact that the trustees, when in funds for which it was their duty to find investments, bought mortgage notes from the real estate firm of Arms and Drury, of which Mr. Drury was a member. Only the last of these propositions, as is apparent upon their face, could by any possiblity raise any question as to the due and proper administration of the trusts, the facts and circumstances relating to which objection, treated as though it had been raised below and therefore were properly before this court, are set out in the auditor's report at pp. 41-2 of the Record, are considered at pp. 163-4 in the opinion of the Court of Appeals, and infra, at pp. 15-20. The present suggestion is that the contention of the appellants before the auditor (Rec., p. 41) and in their exceptions (Rec., p. 130, Exceptions 6, 7, 8, 9), was, not that the purchase by the trustees of promissory notes from Arms & Drury was maladministration, because of which they should be denied compensation for their services, but that Drury's share of the assumed profits of Arms & Drury in the sale of these notes should be considered in arriving at a reasonable allowance to the trustees (Rec., p. 41), or (Rec., p. 163) that they should be charged with Drury's share of these assumed profits. The contention now made, even if otherwise tenable, namely, that the purchase of the notes from Drury's firm was maladministration, of a character to defeat the allowance of any compensation to the trustees, can not be entertained here because not raised by the exceptions to the auditor's report, which exceptions presented the sole questions for consideration below, and because raised by the appellants for the first time in this, the appellate court of last resort.

If, notwithstanding the foregoing, it can be necessary to consider in this court questions not raised by the pleadings, contained elsewhere in the record, nor presented to the court below, it will facilitate their consideration to gather from the appellants' brief, where alone they appear, the charges of maladministration preferred, and to ascertain to what extent, if at all, they find support in the record.

These charges are (a) That the appellee Drury made a profit from the purchase by the trustees, for investment, of securities from Mr. Drury's firm, Arms & Drury; (b) That, in the Massachusetts proceeding, Drury as executor accounted to himself and Maddox as trustees, "to the personal profit of both" (Appellants' Brief, p. 102)which accounting allotted to Drury "\$18,800 to be divided" (81); (c) That, in the performance of his duties as trustee, Mr. Maddox, as admitted by him, was more concerned for his friend, appellants' father, than he was for their interests (pp. 23, 102); (d) That the entire situation was one created, not by the will, but by the co-operation of the appellees and of the guardian of the appellants, their father, to control and use the trust estate (102); (e) That, because Drury made no accounting of his executorship from the time of his appointment in October, 1896, to April, 1899, he has "small claim on a court of equity for compensation in any shape or to any amount" (103): (f) That Drury and Maddox, the trustees, and the friend of the latter, who was guardian for the appellants, allowed Drury \$14,600 for his services, paid by him from his right hand into his left, with the understanding that Mr. Maddox was to have a share of it (103-4); (g) That Mr. Maddox either intentionally betrayed his trust and deceived the Massachusetts court by the designation as expense of a concealed compensation, or was guilty of reckless disregard of his duties (104); (h) That the reliance of Mr. Maddox on Mr. Weir, who represented the Executors and received \$1,000 as an allowance to himself, increased the responsibility of the former (104); (i) That Mr. Drury made no report, to any court, of his transactions by way of purchase, management and sale of real estate between the death of the testator and April 1899 (104); (j) That Mr. Maddox, counsel for the infant beneficiaries, was content merely to obtain control of the estate by transfer of its administration here and his own appointment, whereupon all adversary interest vanished (104), which infidelity in the inception of the trusteeship is wholly inconsistent with a claim of the trustees for compensation (106), and (k) That the trustees were content to receive from Mr. Drury as executor about \$100,000 less than the reported assets of the estate, of which diminution about \$14,600 was paid to Mr. Drury (105).

This arraignment, it must be confessed, is a serious one, and reflects severely either upon the parties charged, or the parties making the charges, accordingly as the record does or does not show justification, or some excuse, for them in the facts or testimony.

(a) The first of these charges, that the trustees purchased from the firm of Arms & Drury certain first mortgage notes, by reason of which purchase Mr. Drury realized

some profit, is, as stated, the only one of them preferred in the record or at the hearings below, and, as also pointed out, it was then urged only as a basis of accountability by the trustees, or by Mr. Drury, to the estate for the supposed profit thus gained. Some distortion of the facts in regard to the acquisition by Arms & Drury of these notes appears at p. 87 of the brief, in the statement that "Mr. Drury's business was the buying of such notes at what he and a vendor considered them worth, and selling them at what he and a purchaser thought them worth;" that he realized no profit until he found a purchaser who thought them worth more than he paid for them, etc., etc., in apparent attempt to place Mr. Drury, or his firm, in the attitude of note speculators, purchasing the notes at whatever price they could get them and depending for their profit upon selling them to a purchaser at whatever higher figure might be obtainable. The undisputed, indisputable fact is that Arms & Drury were real estate brokers who negotiated loans to borrowers upon real estate security, consisting largely of what are known as building loans, and charging for their services the usual broker's commission of from one to two per cent, usually one per cent (Rec., pp. 63, 68, 71-2, 58), which commission was paid by the borrowers to whom Arms & Drury made the loans (Rec., p. 74). When the trustees, from the proceeds of the small second trust notes which comprised the bulk of the testator's estate at the time of his death, had accumulated a sufficient fund for investment in first mortgages, they purchased a considerable number of these promissory notes from Arms & Drury, in the case of building loans after the buildings had been completed (Rec., pp. 54-5) and the investment had thereby become secure from contingencies. That the margins were safe and the investments good is shown by the fact that, in every instance the trustees realized the full amount called for by the notes, principal and interest (Rec., p. 55). None of the loans were made out of funds belonging to the Richardson estate (67), nor was there any profit to Arms & Drury from the sale of the notes, their only profit being the small commission above stated, paid by the borrower to the firm for negotiating the loans at the time they were made (Rec., pp. 66, 74-5). As pointed out by the auditor, no charge of malfeasance or misfeasance was made against the trustees in this connection at the hearing before him (42); and he further found (ib.) that these transactions of the trustees with the firm of Arms & Drury "benefited the estate by enabling the trustees at all times to make immediate reinvestment of its funds, without loss of income."

"It is clear that the notes were bought at their face and actual value, that no profit was made by the trustees, and that not a dollar was lost to the estate. Drury knew the character of the notes, and there was less trouble and expense in the investigation of titles than there would have been in the purchase of similar securities from others; nor does it appear that like securities could have been readily obtained from others. The other trustee, Maddox, had no connection with the partnership of Arms & Drury. He was entirely disinterested, and there is no complaint against him other than that he concurred in the purchase of the securities. \* \* \* Dealings with the partnership of Arms & Drury by trustees, one of whom was a imember of the partnership, call for the closest scrutiny of each and every such transaction; but when that scrutiny has disclosed no actual wrongdoing, no advantage taken of the situation, no profits made and no possible injury to the interests of the beneficiary. there is nothing calling for restoration by the supervising court. A pecuniary charge, therefore, in the settlement of the account, would, under such circumstances, not be a restoration, but could be inflicted only by way of fine and punishment."

Magruder vs. Drury, 37 App. D. C., 519, 545-546;

Rec., 163-4.

It is further to be observed, as with so many of the objections sought to be urged in this court, that this claim of maladministration, rendering it error to allow any compensation to the trustees, because of this alleged indirect profit to Mr. Drury in the purchase of securities from his firm, was not made below. There the claim was, only, that the profit in question should be considered in determining the amount of the compensation to be allowed.

"The Auditor: The proposition is that one trustee has received compensation in connection with handling these investments, and that that should be taken into the account.

"Mr. Wilson: That is all." (Rec., p. 67.)

(b) The second charge of malpractice is (Appellants' Brief, p. 102), that "Mr. Drury as executor accounted to himself and Mr. Maddox as trustees, to the personal profit of them both," and that (81) they, in the absence of Mr. Richardson, the other executor, "allotted this \$18,800, to be divided."

The undisputed facts in this regard are that, the testator in his will having (Rec., pp. 9-10) described himself as an inhabitant of Cambridge, in the County of Middlesex, Massachusetts, and as having property in that county, and his brother, George F. Richardson, Esq., one of the executors and a resident of Massachusetts, representing to his co-executor that the testator had expressed a desire that his estate should be administered in Massachusetts, the will was offered for and admitted to probate there and letters testa-

mentary issued to them by the Probate Court of Middlesex County. Some two years later, the taxing authorities of that county undertook to levy and collect an annual tax of \$7,500, aggregating about \$15,000 for the two years, upon the assets of the estate, whereupon the appellants, then infants, by their father, their guardian and appearing as their next friend, filed their original bill of complaint, alleging that the domicile of the testator, notwithstanding the recital of the will, was in the District of Columbia, where all of his property was except one or two parcels of unproductive real estate of trifling value in Massachusetts, that George F. Richardson, one of the executors, as the plaintiffs were informed, had filed his resignation as executor and trustee under the will in the Middlesex Probate Court, that the plaintiffs, their mother the life tenant being then deceased, would be subjected to inheritance and other taxes and dues in Massachusetts unless protected in their rights, and the bill accordingly prayed that an account should be taken of the assets received by the executors, who were the defendants to the action, that they should be required to file accounts from time to time showing what moneys they received and the disposition thereof, and that, if the plaintiffs were correctly informed that the defendant George F. Richardson had resigned as executor and trustee under the will, some fit and proper person might be appointed in his stead, and for general relief. Richardson being beyond the reach of personal service and declining to submit himself to the jurisdiction of the District of Columbia Courts, the bill was amended by making Mr. Drury the sole defendant, with similar prayers for relief, the present appellee, Mr. Maddox, being the attorney for the plaintiffs in these proceedings. Mr. Drury answered, neither denying nor admitting the allegation as to the testator's domicile, consenting, for himself, to account in the Supreme Court of the District, or in any other court having jurisdiction in that behalf, for all moneys and property received by him as executor and trustee, to further account from time to time as might be necessary, and consenting that, if his co-executor and trustee George F. Richardson should decline to act as trustee, some proper person might be appointed to act as such trustee with him in the place and stead of said George F. Richardson. This was followed by the order of April 1, 1899, appearing at pp. 16-17 of the record, reciting that it appeared to the court that the testator's last domicile was in the District, and that the infant complainants lived there, and thereupon appointing Samuel A. Drury and Samuel Maddox "trustees to perform the trusts created in and by said will, and authorized and empowered to receive from the executors named in said will all the property whereof the said deceased died seized and possessed," upon giving bond in the sum of \$25,000 each, "conditioned for the faithful discharge of their duties as such trustees." Although the order is not copied into the record, it appears from the testimony of Mr. Maddox (Rec., p. 77) that there was, also, an order enjoining the executors from paying the tax sought to be collected from them by the Massachusetts authorities.

As will appear upon inspection of this order of April 1, 1899, it appointed Messrs. Drury and Maddox to be trustees, only, not executors, and with authority and power "to receive from the executors named in said will" all the property of the estate. Under the laws of the District, as declared by the Court of Appeals in its opinion (Rec., p. 162), "the Equity Court had no jurisdiction to probate a will and to establish and enforce one as to personalty. Whatever may be the latitude of the rights and powers of

executors of unprobated wills by the rules of the common law, or whatever may be the limitations thereof resulting from our probate statutes, it is quite certain that they had no power to administer a trust of personal property created by will, without its probate in due form. As there was no probate in the District, the authority of the executors necessarily rested in the probate and letters testamentary of the Massachusetts court." "No offer was ever made to probate the will in the District of Columbia, which was necessary to confer power on the executors to administer the estate therein. The only source of their authority was the order of the Massachusetts court admitting the will to probate and issuing the letters testamentary which they received." (Rec., p. 160.)

Upon the foregoing state of facts and of the law, it would seem too plain for controversy, except for the contentions of the opposing brief, that the result of the proceedings in the District of Columbia was to leave the probate of the will in Massachusetts and the administration of the estate there by Messrs. Richardson and Drury, qua executors, unattacked and undisturbed; and that the court here, in appointing Messrs. Drury and Maddox "trustees to perform the trusts created in and by said will," which trusts it was, as per the above quotation from the opinion of the Court of Appeals, without power to administer otherwise than after probate of the will in due form, contemplated and had power to authorize only a taking over by them from the executors of such property as should be left in the hands of the latter for the purpose of the trusts, after its due administration by them as executors.

The contention as to this point by the appellants is based upon the order of the Middlesex Probate Court of April 11, 1899, which decreed that "George F. Richardson and Samuel A. Drury, executors as aforesaid, be and hereby

are authorized and directed to pay over the said trust funds to the said Samuel Maddox and Samuel A. Drury, trustees as aforesaid," and the contention that, since the trust funds and property were already in the possession of Mr. Drury. no further act of transfer was requisite at that time (Appellants' Brief, pp. 14-15). Stress is further laid upon the following clause in this order, as indicating that its object was to relegate the entire matter, the accounting of the administration of the estate by the executors included, to the District courts: "It further appearing to the satisfaction of the court that the laws of the District of Columbia secure the due performance of said trust, and it being deemed just and expedient so to do." With respect to these claims, it is to be noted, first, that it was the "due performance of said trust" which the Massachusetts court had been satisfied was secured by the laws of the District of Columbia, and that it was "the said trust funds," only, which the executors were authorized to transfer to the trustees. As pointed out, supra, the District Equity Court, which appointed Drury and Maddox trustees, was without power to probate a will, to establish or enforce one as to personality, or to administer a trust of personal property created by a will, without its probate in due form, nor is there the slightest indication in the record of the proceedings in either of the courts that either of them contemplated that the administration of the estate by the executors, which could be only in a probate court, should hang in mid-air, granted but not closed in the Massachusetts Probate Court, and then transferred to the Equity Court of the District of Columbia, which was without jurisdiction over the trusts created by the will until after completion of the administration of the estate in the probate court, there being no probate of the will in the District of Columbia, and the probate being "necessary to confer power on the executors

to administer the estate therein" (Rec., p. 160). That the Massachusetts Probate Court did not regard its order of April 11th as terminating proceedings in that court, or as relieving the executors commissioned by it to administer the estate from the duty of accounting to it, the court of their appointment, for their administration, is shown by the fact that it received, examined and considered their account, submitted by them to it for that purpose, and decreed its allowance (Rec., p. 89), that account charging them with the assets of the estate as inventoried in that court, crediting them with their disbursements down to the date of its approval, and leaving a net balance in their hands for transfer to the trustees, itemized in the last eight items of the account, which net balance was receipted for by the trustees as the property which they were authorized and empowered to receive from the executors by the order of the Supreme Court of the District of Columbia of April 1, 1899, and the order of the Massachusetts Probate Court of April 11th, above referred to.

It was in this account of the executors, so approved by the court of their appointment after examination and consideration by it, that the allowance to the trustees of \$18,800 now under consideration was contained. As appears in the record (p. 88), under ther ules of the Massachusetts Probate Court, compensation in the form of commissions is not allowed executors there, but in lieu thereof the court allows such compensation for services and expenses as in each case it may deem to be just and reasonable.

It is objected that the allowance claimed in the executors' account does not comply with the terms of this rule, in that the word "compensation" does not appear in it, the item being (Rec. p. 90) as follows: "Expense of administration, including care of property, the payment of debts,

the making of final account, the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and other sources of \$58,168.94, the payment of about \$50,000 for repairs on real estate, the taking up of prior mortgages, taxes, etc., including also the payments of moneys to Isabel Magruder and to Alexander F. Magruder, the guardian of their minor children, counsel fees incurred in the defense of suits for taxes in Massachusetts and for counsel fees in Washington, etc., \$18,800." On the contrary, we submit that, while the word "compensation" does not appear in the item, the enumeration of the services performed by the exectuors as the basis for the allowance claimed readily and plainly conveyed, to the apprehension of ordinary intelligence, that it was compensation to the executors for the services thus enumerated, and not their expenditures in the performance thereof, which was the basis of the allowance asked;-for example, the sum claimed, \$18.800, could not have been claimed as a credit to the executors for the \$50,000 expended by them in repairs, the \$17,400 paid to Mrs. Magruder during her lifetime, the \$8,200 paid to the guardian of her children, the \$49,705.31 expended in repairs, taxes, prior mortgages on the real estate, and the like.

It is, further, the undisputed fact in the record that neither Mr. Drury (Rec., p. 60) nor Mr. Maddox (Rec., p. 75) had anything to do with either the formulation of this item nor with its amount, further than to submit the matter to the judgment and follow the advice of Mr. Weir, the Massachusetts lawyer, by whom the account was prepared, and who advised them that the amount claimed probably would be allowed by the Massachusetts court in a case of this character, followed by the submission of the account, the item in question included, to Mr. Richardson,

the co-executor, a Massachusetts lawyer of eminence and distinction, whose high sense of honor and whose absolute disinterestedness is shown by the fact that, although the allowance was to both executors, he assigned the whole of it, less the expenses which were to be paid out of it, to his co-executor Mr. Drury, because all the services had been rendered by the latter, and Mr. Richardson, although legally entitled, was unwilling to accept compensation for services which he himself had not in fact rendered; the approval of these two Massachusetts lawyers being followed, further, by the submission of the account, the now disputed item included, to the examination, consideration and approval of the judge of the Massachusetts Probate Court, by whom it was allowed. So far from Mr. Richardson having resigned from the executorship, as alleged in the bill of the appellants in the Equity Court, accompanied by no attempt at proof, the record shows that in this, the concluding act of the executorship, he participated, signing and making affidavit to the final account as rendered, the disputed item included, as "just and true" (Rec., p. 91).

Out of the allowance, the executors were charged with the duty of paying all the expenses of administration, including the compensation of counsel in resisting the attempted taxation of the assets of the estate in Massachusetts. The estate in its defense against the payment of this tax was represented as counsel by Mr. Maddox, Hon. William H. Moody, later an Associate Justice of this court, and Mr. Weir, a lawyer having offices with Mr. Richardson, one of the executors. The only foundation for that part of the charge now under consideration which represents that "Drury as executor accounted to himself and Maddox as trustees, to the personal profit of both" (Appellants' Brief, p. 102), and that the \$18,800 allotted to Drury was "to be divided" (ib. p. 81), is the fact that

Messrs. Moody and Maddox were paid by Mr. Drury as executor, out of the \$18,800 allowed him in part for that purpose, a fee of \$3,000, which was shared equally between them. Such a charge, upon such a foundation, we submit is most unjustifiable.

Nor is it true, as claimed, that Drury as executor accounted to himself and Maddox as trustees. He accounted to the Massachusetts Probate Court, the court of his appointment, which duly approved the account. It is further argued, however, that the account, when submitted to the Massachusetts Probate Court, contained an endorsement on behalf of the plaintiffs by their father and guardian ad litem, and by Maddox and Drury as trustees: that the order of approval by the probate court was a mere formal order, based upon this consent, and certain authorities are cited to the effect that an ex parte approval of an account by a trustee or other fiduciary, where he himself is interested, is insufficient to bind infants concerned in the mat-There are several inaccuracies in this statement. the first place, Alexander F. Magruder was the duly appointed guardian, not merely the guardian ad litem, of the appellants. In the second place, even if it were not to be assumed that the judge of the probate court possessed the legal knowledge, assuming it to be correct, which is displayed on behalf of the appellants in the statement that the rights of infants can not be concluded by the consent of parties representing them, and if the maxim omnia rite acta praesumuntur is not to be indulged in regard to that tribunal, its order, though reciting the consent of the parties, shows, affirmatively, that the court, itself, "examined and considered" the account, and thereupon allowed it (Rec., p. 89).

The learned counsel for the appellants would seem, moreover, to be in error in their conclusions as to the effect of a consent decree, assented to on behalf of infant parties by their guardian and thereupon passed by the court. In Massachusetts, where the proceedings now under consideration were had, the Supreme Judicial Court, speaking by Chief Justice Gray, later one of the Justices of this court, held that a decree made upon consent of the guardian ad litem of an infant and the representation of counsel, and an adjudication of the court that it was a decree fit and proper to be made, is binding upon the infant. Walsh vs. Walsh, 116 Mass., 377. To like effect is the case of Thompson vs. Maxwell, 95 U. S., 391, 398, in which a consent decree, the infant parties to the cause being represented by their guardian ad litem, it was held could not be impeached except for fraud. The authorities generally, it is believed, are to the same effect.

(c) The third charge of maladministration is that Mr. Maddox, as admitted by himself, was more concerned for his friend the appellants' father than he was for the interests of Alexander Magruder, his cestui que trust (Appellants' Brief, pp. 23, 102). The sole foundation for this charge is the following: Dr. A. F. Magruder, father of the appellants, had at the instance of the testator conveyed property which was his own inheritance to the latter in trust for his sister Eliza C. Magruder for her life, with remainder to the appellants, this trust having been created when Dr. Magruder was ill and supposed to be at the point of death (Rec., pp. 82, 21-22). After the appellant Alexander R. Magruder had attained his majority, Mr. Maddox suggested to him the propriety of conveying to his father a life estate in what is known as the Araby Farm, which had been purchased by the trustees at a cost of \$15,500, which suggestion the son refused to accept. It was only in regard to this suggestion (Rec., p. 82), in no way connected with the administration of the trusts by himself and Mr. Drury, that Mr. Maddox was asked on cross-examination whether the son had not charged him with being more concerned with the father's interests than in those of the son, and Mr. Maddox replied, as was entirely apparent from the suggestion itself, in the affirmative, the suggested provision by the son of a home for the father for the period of the latter's life, under and because of the circumstances stated, being obviously intended for the father's benefit. It is upon this foundation, solely, that the charge is made, for the first time in this court, that in the administration of the trusts Mr. Maddox was guilty of maladministration in that he was "more concerned for the interest of his friend, the father of the appellants, than for their interests."

(d) The fourth charge of maladministration is that the entire situation under which the allowance of the \$18,800 was made "was the creation, not of the testator's will, but of the co-operation of Messrs. Maddox and Drury, and the guardian, to control and use the trust estate" (Appellant's Brief, p. 102).

This charge, it must be confessed, seems inexplicable and amazing. The wholly undisputed testimony is that the bill and the amended bill in equity (Rec., pp. 1-9) were filed for the sole and only purpose of protecting the estate from a large tax assessment sought to be made against it in Massachusetts, amounting to \$7,500 per annum, equivalent to approximately three per centum upon its aggregate amount, and only about \$1,000 less than the amount which has been annually available from it for the appellants' support (Rec., p. 45). The statement of the executors' account in the probate court, claimed here to have been brought about by the co-operation of Messrs. Maddox and Drury and the

appellants' father for the purpose of controlling and using the trust estate, was upon the advice of Mr. Moody (Rec., p. 75) in view of the fact that another Massachusetts tax year would begin in a few days, the account being settled April 25th and the new tax year beginning May 1st, with the result that, if the tax suit should be lost, another charge of \$7,500 would be sucessfully asserted against the estate unless the assets were removed therefrom prior to the last named date. The charge by the appellants, in effect that the trustees and their own father conspired together to create a situation which resulted in the settlement of the executors' accounts and the allowance of the item under consideration, in order "to control and use the trust estate," indefensible as against any one of them, seems peculiarly so as against the father, who nowhere in the record is shown or claimed, however remotely, to have sought to use or control the trust estate in any manner whatsoever, or to have either sought or received any benefit to himself from it.

(e) The fifth charge of maladministration is that Mr. Drury made no accounting of his executorship from the time of his appointment in April, 1896, to April, 1899, and therefore has "small claim on a court of equity for compensation in any shape or in any amount" (Appellants' Brief, p. 103). The period in question, it will be noticed, is that during which he and his co-executor Mr. Richardson were administering the estate in their capacity as executors, and prior to his appointment as a trustee by the Equity Court. Throughout this period he kept books showing all the transactions concerning the business of the estate, all moneys received by the executors and all moneys paid out by them (Rec., pp. 58-59), and the account of himself and his co-executor, duly submitted to the court

of their appointment, was by it upon due examination and consideration found to be correct and approved. Upon these facts, wholly undisputed, in what does the maladministration consist? What color of justification or excuse can be found for the charge?

It is contended on behalf of the appellants, it is true, that under the decree of the Equity Court of October 18, 1899, the cause was referred to the auditor "to state the account of the executors and trustees under the will of the said deceased," with which the auditor, in his first report, complied in so far as to state the account from the time that the trustees were appointed in the equity cause, only, not attempting to state the account of the executors, properly so called, in their administration of the estate under the authority of the Massachusetts Probate Court, to which court they had already accounted. That report of the auditor was accepted and approved by the court which ordered the reference, and was followed by four other reports, similarly acted upon by the court prior to the sixth and last report. under which the present controversy arises. The reopening by the present auditor, under the last order of reference. of the report made by his predecessor ten years before, he held himself without authority to make under the orders of reference under which he was acting, even if the court below was vested with jurisdiction to vacate the decree of the Massachusetts court affirming the executors' account. or to require those executors, of one of whom the court below had never acquired jurisdiction, to restate their accounts in this District. The first report of the auditor was satisfactory to the parties then, and now, in so far as the record shows. It had not only been approved by the court, but acquiesced in by everybody, including the appellants after they had attained their majority and beyond the time allowed in equity for the filing of a bill of review. In

their petition for the distribution of the estate, as above pointed out, they recite, without criticism, objection or the suggestion of a desire for amendment, in any respect, the statement by the executors of their account in the Massachusetts court and its approval there, the receipt by the trustees of the assets which that accounting showed remained in the hands of the executors, after the allowance of the \$18.800 to the latter, the auditor's first account, its approval, and the several successive accounts before the auditor, a copy of the inventory and account filed by the executors in the Massachusetts proceedings, the latter showing the \$18,800 allowance, being filed with their petitions as exhibits "Magruder Exhibit A" and "Magruder Exhibit B" (Rec., p. 28), seemingly in contradiction of the allegation at page 67 of the brief, nowhere else alleged and nowhere attempted to be proved, that neither the appellants nor their present counsel knew of the circumstances of the settlement of the executors' account until the testimony was taken in the audit out of which the present appeal arises. Neither the reference to the late auditor, of January 15, 1909, nor the supplemental or amendatory order of February 3, 1910 (Rec., pp. 27, 37), authorized the auditor to reopen any former accounting, nor to state any account except that "of the trustees"-not of the executors. How, upon a state of the record such as this, was it possible for the auditor to do otherwise than to confine himself to the duties thus imposed upon him? And what possible basis is there in these orders of reference, or elsewhere in the record, for the claim of the brief, at page 62, that "it was his duty to ascertain and report any fact which was a bar to their final discharge"?

The allegata must be the basis for the probata (Boone vs. Chiles, 10 Pet., 171; Carneal vs. Banks, 10 Wheat., 181).

"A party can no more succeed upon a case proved and not alleged, than upon a case alleged and not proved" (Foster vs. Goddard, 1 Black., 518).

The contention of the appellants is that, of his own motion, not only without anything in the order of reference justifying such action, but without any pleading, application or allegation anywhere in the record that such action was sought, the auditor should have decided that his predecessor, in his first report, had failed properly to comply with the then order of reference, that the court which ordered the reference had erred in approving that report, that the parties were not required to except, object or seek rectification, but that he, the present auditor, should have reopened the proceedings of the past ten years, and should have reviewed them in accordance with what he should conceive ought to have been done under the order of 1899, under the order of reference to himself, made in 1910. and which was incapable of affording any semblance of such authority.

It is further to be said that the exceptions to the last report of the auditor, after it had been completed and filed, were the first claim or intimation on the part of the appellants that the account of the executors should have been stated under the order of reference of 1899, or should be stated now. Not only is no such claim to be found in the pleadings, but it was not presented, even orally, before the auditor. As shown by his report (Rec., p. 39), the claim before him was, merely, that the allowance to Drury for his services as executor in the Massachusetts court should be considered in fixing the compensation of the trustees.

The record shows that, at a comparatively early stage in the last audit, the auditor gave notice that he held himself without authority to reopen prior accounts, confirmed by the court, without the specific direction of the court (Rec., p. 39). Timely notice and opportunity were, therefore, afforded the appellants to have the order of reference broadened in this respect, if desired by them, and if the court should find it competent to do so. No such application was made. The auditor further held that, even if he possessed the power under the reference to reopen the former auditor's reports, the allowance by the Massachusetts courts could not be reviewed by the Supreme Court of the District of Columbia, which had no jurisdiction of the executors or of their accounts (Rec., p. 39), which view was sustained by the courts below (Rec., pp. 162-163, and see infra, p. 36).

The position taken by the appellants in the Court of Appeals, as stated in the opinion of that court, was that the Massachusetts Probate Court was without jurisdiction, the domicile of the testator at the time of his death having been in the District of Columbia (Rec., p. 159). This attitude upon their part is denied by the appellants in their brief here (p. 68). The controversy is immaterial for present purposes, since, in this court, "the appellants do not so contend. \* \* \* The Court of Appeals treats the appellants' contentions as though the present were an attempt to impeach or refuse credit to the adjudication of the court of Massachusetts. Nothing could be further from the truth. Nothing that the Massachusetts court intended to do is sought to be undone by the appellants."

That the Massachusetts court did, after due examination and consideration, allow the executors for their expenses and for the services set forth in their final account submitted to that court the sum of \$18,800, is incapable of dispute. This being so, the jurisdiction of that court to make that allowance being now conceded, and nothing which it intended to do being sought to be undone by the appellants, it is difficult to see what controversy can remain, in re-

spect to the item in the executors' account of \$18,000 and the order of the Massachusetts court allowing it.

The jurisdiction of the Massachusetts court being thus unquestioned, certainly in this court, was there error in the view of the auditor, sustained by the lower courts, that, even if the reference to him were broad enough for the purpose of reopening the account of the executors, which had already been stated and approved by the Massachusetts Probate Court, an order directing such reopening was beyond the jurisdiction of the Equity Court of this District? In other words, independently of the question of the jurisdiction of the Federal courts to settle the accounts of executors appointed in a foreign jurisdiction (supra, 5), could the judgment of the Probate Court making the allowance in question be collaterally reviewed by an equity court, either in the District of Columbia, or in the State of Massachusetts itself? The contrary, even in the case of the Massachusetts equity courts, is established by the authorities there. Jennison vs. Hapgood, 7 Pick., 1: Paine vs. Stone, 10 Pick., 75; Abbott vs. Bradstreet, 85 Mass. (3 Allen), 587. The rule is the same elsewhere, it is believed without dissent. Goodrich vs. Thompson, 4 Day, 215; State vs. Roland, 23 Mo., 95; Iverson vs. Loberg, 26 Ill., 180; Commonwealth vs. Cain, 80 Ky., 318; Reynolds vs. Jackson, 31 N. J. Eq., 515.

(f) The sixth charge of maladministration is that Drury and Maddox, the trustees, and the friend of the latter, the father and guardian of the appellants, allowed Mr. Drury \$14,600 for his services, paid by him "from his right hand into his left," and with the "understanding" that Mr. Maddox was to have a share of it (Brief, pp. 103-104).

The only foundation for this charge is that Messrs. Drury and Maddox, neither of whom knew the methods

under the Massachusetts practice for stating the claim of executors for compensation or the amount properly allowable under the practice there, left these matters in the first instance to Mr. Weir, a Massachusetts lawver whose integrity and standing are not attempted to be impeached, to be followed by the submission of the account to and the concurrence in it by Mr. George F. Richardson, another Massachusetts lawyer of eminence and distinction, and its final examination, consideration and approval by the judge of the Massachusetts Probate Court. The charge that the allowance of the particular sum stated, \$14,600, was made for Mr. Drury's services, rests upon the fact, not that either Mr. Drury, Mr. Maddox or the appellants' father fixed upon that sum, but that there was \$14,600 left, for their compensation, of the allowance made by the court to the executors after paving the expenses of the litigation over the taxes and the other items embraced in the allowance, for which in part it was made; while the charge of an "understanding" that Mr. Maddox was to have a share of the allowance has no basis other than the fact that he and Mr. Moody were the attorneys for the executors in the Massachusetts litigation over the tax assessments, for the expenses of which litigation the allowance was in part made, and their fees for their services as ultimately paid were \$1,500 each (supra, pp. 27-8).

(g) The seventh charge, that Mr. Maddox either intentionally betrayed his trust and deceived the Massachusetts court by the designation as expense of a concealed compensation, or was guilty of a reckless disregard of his duties in that connection (Brief, p. 104), has been sufficiently considered in connection with Charge b (supra, pp. 25-6). The word "compensation" is not used in the itemization connected with the allowance claimed and ap-

proved by the court, but that the claim of an allowance for the services enumerated in it was the same thing as a claim for compensation for those services was and is entirely clear to any ordinarily intelligent comprehension. So grave a reflection, without any just, reasonable or even fairly colorable foundation for it in the record, against a lawyer of long and unimpeached standing at the bar of this jurisdiction, would seem to be accountable only on the theory that the personal hostility of one of the appellants has unfortunately been allowed to filter its way into the brief, and this for the first time in the court of last resort, without any allegation in the pleadings or otherwise in the record to give notice of it to the party attacked, or opportunity adequately to reply to it. "No charge of malfeasance or misfeasance is made against the trustees"—auditor's report (Rec., p. 42). "A number of exceptions were entered to said report. Those that have been relied on relate to the allowance of the 5 per cent commission on principal and 10 per cent on income; to the \$18,800 item allowed by the Massachusetts court, and to alleged profits made by the trustees in the purchase of notes for reinvestment" (Opinion Court of Appeals, Rec., p. 158).

(h) The eighth charge of malfeasance, also, relates to Mr. Maddox alone, and is to the effect that reliance by him on the advice of Mr. Weir, a Massachusetts lawyer, with respect to the proper form in that State of executors' accounts and the claim for an allowance to executors, increased his responsibility because of the fact that Mr. Weir represented the executors, and himself received \$1,000 as a fee (Brief, p. 104).

Mr. Weir was of counsel for the executors in the matter, only, of the tax title suit (Rec., p. 59). Mr. Moody, their

senior counsel in that matter, was advising the executors to close their account in Massachusetts before the first of May in order to avoid the possibility of another year's tax assessment (75), for which there was scant margin of time, and for this purpose his associate in the tax suit, Mr. Weir, came to Washington on Sunday, two days before the submission and approval of the account, which was on April 25th, only five days before a new tax year would begin, to assist in the preparation of the executors' account, in time (Rec., p. 59). He was the only one at the Washington conference who possessed the necessary knowledge to suggest the item in the account under the Massachusetts practice for the allowance to the executors for expenses and compensation (59-60), and Mr. Drury supposed the item was arrived at in the account from Mr. Weir's knowledge of the Massachusetts law (60), being aware, also, that Mr. Richardson would know of the item when the account was passed (ib.). The charge that it was maladministration upon the part of Mr. Maddox to rely upon the advice given by this Massachusetts lawyer, in regard to Massachusetts law and practice, because he knew the lawver was to be compensated for his services, if correct, would make it wrongful for clients to rely upon the advice of counsel in any case except when rendered gratuitously. Mr. Weir explained that the \$18,800 was to be an allowance to the executors for their work and to pay the costs attending the tax suit, Mr. Maddox knowing nothing of the course of procedure in the Massachusetts courts and making no suggestions (Rec., p. 75).

At pages 32 and 81 of the brief for appellants, it is represented that \$1,000 was sent to Mr. Richardson, which he refused to receive and which he turned over to Mr. Weir; that this \$1,000 was proffered to Mr. Richardson as "the inactive one" of the trustees, "and, though he refused

it himself, did not see that it was restored to the beneficiaries." On the contrary, the uncontradicted, undisputed testimony in the case is that this one thousand dollars was sent to Mr. Richardson, who was refusing to accept any part of the compensation allowed for work done exclusively by Mr. Drury (Rec., p. 60); that Mr. Weir came to Washington to assist in preparing the executors' account as the representative of Mr. Richardson (Rec., p. 75), and that the thousand dollars, instead of being proffered to and refused by Mr. Richardson, the inactive trustee, was sent him for the purpose of being given to Mr. Weir in compensation for his services, to which purpose in so far as the record shows it was applied (Rec., pp. 60, 97).

(i) The ninth alleged act of maladministration, this time confined to Mr. Drury, is, that he made no report, to any court, of his transactions by way of purchase, management and sale of real estate between the death of the testator and April, 1899 (Appellants' Brief, p. 104), the date when the executors' account was presented to and approved by the Probate Court of Massachusetts. On the contrary, the Auditor's Exhibit 3 (Rec., pp. 96, 118-128). sets forth a detailed statement of every real estate transaction by either the executors or the trustees, these transactions consisting for the most part in buying in, for the protection of the estate, properties on which the testator at his death held second encumbrances, and later reselling such of the properties as do not remain a part of the trust estate, in every instance of such sale with some realization in price to the benefit of the estate. The only property purchased by the trustees otherwise than under foreclosure proceedings upon the second trust notes was the purchase, in 1901, of what is known as the Araby Farm, under the authority of the court as a summer home for the appellants, for the sum of \$15,500 (Rec., p. 24).

(j) The next charge of maladministration, made against Mr. Maddox alone, is that he, as counsel for the infant beneficiaries, was content merely to obtain control over the estate by transfer of its administration here and his own appointment as trustee, whereupon all adversary interest vanished (Appellants' Brief, p. 104), which infidelity in the inception of the trusteeship, the brief further states, is wholly inconsistent with the claim of the trustees for compensation (*ib.*, p. 106).

The object of the equity suit, the only one in which Mr. Maddox was counsel for the infant beneficiaries, was to protect the estate from the payment of the Massachusetts taxes (Rec., p. 76), to which end, only, it was necessary to secure transfer of administration to the District of Columbia. Not only is this an undisputed fact in the record, but in the opposing brief, at page 7, the equity suit, the benefit of which the appellants have at no time and in no respect sought to relinquish, is referred to as a "contrivance of the trustees before their appointment to deny and defeat the jurisdiction of the Massachusetts court."

The only "adversary interest" which ever existed in that suit was the refusal of Mr. George F. Richardson to join in the defense against the tax assessment, which, in view of the inability of the Equity Court to obtain jurisdiction over Mr. Richardson, was obviated by the amendment of the bill, making Mr. Drury the sole defendant (76-7). So far from any other "adversary interest" having "vanished," as alleged, the purpose of the equity suit was pursued and accomplished by the transfer of the assets of the estate from Massachusetts to the District of Columbia five days before the beginning of the third taxing year in that State, so that, however the suit there pending to defeat the assessments should be determined, the estate was protected from any further liability to the taxation sought to be enforced

against it. Later, by the decision of the Supreme Judicial Court of Massachusetts in Dallinger vs. Richardson, 176 Mass., 77, the liability of the estate for the first two years' taxes was defeated, which decision, as stated at page 6 of appellants' brief, "put an end to any real apprehension that the estate of Mr. Richardson could be assessed for taxes in Massachusetts, and removed that objection to the continued administration of the estate in Massachusetts, if that had been desired"; but the decision in Dallinger vs. Richardson was not rendered until the 16th day of May, 1900, at which date the Massachusetts administration had been for more than a year terminated, trustees here had been appointed by the Equity Court, and the estate delivered from the possibility of taxation in Massachusetts, these results being accomplished prior to the decision in Dallinger vs. Richardson and when, therefore, it was unascertained whether the defense in Massachusetts against that taxation would be successful. What "infidelity in the inception of the trusteeship" the appellants have felt themselves justified in charging, under these facts and circumstances, made for the first time in their brief in this court, has not thus far been made apparent to the appellees, who are accordingly without opportunity further to reply to it.

(k) The final charge of maladministration, appearing at page 105 of the brief, is that the trustees "were content to receive from Mr. Drury as executor about \$100,000 less than the reported assets of the estate. Of this diminution \$14,600 were paid to Mr. Drury."

The \$14,600 here referred to is, simply, what was left of the allowance to the executors made by the Massachusetts court as compensation for their services and for payment of the costs and expenses of the Massachusetts tax litigation, after payment of those costs and expenses had

been made, and need not be further discussed. eliminated, there remains, simply, a charge of maladministration consisting in acquiescence by the trustees in an alleged diminution of the estate by the executors to the extent of about \$100,000, with an innuendo or implication, for without it there would maladministration, that the diminution question was a wrongful one. At page 40 of the brief it is alleged that, while the first account of the trustees showed as assets \$248,569.01 of good promissory notes in addition to \$26,907.06 considered as desperate, their last account showed notes amounting to only \$138,642.00, accompanied by a diminution in value of the entire estate during the same period. Again, at page 46, it is alleged that "the value of the entire estate, real and personal"-conceded to be \$261,201.71-"(less the cash retained), at the close of the trusteeship was less than the amount of the personal estate at the beginning of the trusteeship by about \$10,000, leaving out of consideration the value of the real estate," with the suggestion that the amount of this loss "seems the equivalent of 14 pieces of real estate turned over to the trustees, but which seem to have disappeared before the estate was transferred to the beneficiaries"; while at pages 50-51 it is charged that the inventory of the estate, verified by Mr. Drury at the commencement of the executorship, showed property valued at \$328,124.57 of good assets and \$38,-614.78 of bad or doubtful notes, and that the schedule of real estate, including a part of the Eliza C. Magruder trust property, showed a value of \$39,800, making the total value of the property inventoried \$406,139.45-this schedule not containing, it is further objected, the lots in Cambridge mentioned in the bill of complaint and the answer of Mr. Drury, of the disposition of which lots, it is further complained, there is no account anywhere in the record.

With respect to the Cambridge lots, the very objection shows that they were not accounted for in the Massachusetts proceedings or in any one of the four accountings had before the auditor of the Supreme Court of the District of Columbia prior to the final audit here in controversy, and that, therefore, the appellants were fully privileged, if they or their counsel were really ignorant of the true facts in regard to those lots, to call upon the appellees in this sixth or final accounting, out of which the present appeal arises, for the accounting as to those lots, the absence of which they now complain of. It is manifest from the auditor's sixth report (Rec., pp. 37-47) and from the opinion of the Court of Appeals (Rec., pp. 147-165) that these lots formed no part of any of the contentions between the parties, which fact is further emphasized by the appellants' exceptions to the auditor's report (Rec., pp. 129-131), no one of which bears the remotest reference to them; and this although, as the appellants and their counsel well knew, the order of reference under which the sixth audit was had was, "to state the final account of the trustees and distribution of the trust estate in their hands" (Rec., p. 37). An objection under these circumstances, first made in the court of last resort, presenting a question neither raised below nor capable of being raised under the exceptions, must under familiar principles be untenable here.

Why the appellees, when examined on behalf of the appellants before the auditor, were not interrogated as to these Cambridge lots is, however, apparent. The testator's will (Rec., pp. 9-10), describes himself as "a citizen and inhabitant of Cambridge, in the County of Middlesex and Commonwealth of Massachusetts, and having property in said county," from which recital it is perhaps to be presumed that he was the owner of some property in Middlesex County at the time of the execution of the will. Both the

bill and the amended bill of the appellants accordingly (Rec., pp. 3, 7) allege that the testator at the time of his death had "one or two parcels of unproductive real estate of trivial value, and no other property," subject o the jurisdiction of the courts of Massachusetts. The schedule of real estate returned by the executors to the Massachusetts court, however (Rec., p. 85), includes no property in Massachusetts: their petition to the Massachusetts Probate Court (Rec., p. 86) recites that neither at the time of the granting of the letters testamentary to them nor since had there been any property in Massachusetts belonging to the estate of the testator, and in the tax suit, Dallinger vs. Richardson, 176 Mass., 177, 179, the courts of Massachusetts found the fact to be that the testator had had no property in Cambridge since the year 1875. That this situation with respect to the Cambridge lots was fully known to the petitioners is further evidenced by the fact that, in their petition to the Supreme Court of the District of Columbia, filed June 16, 1909, asking distribution, etc., they filed as Exhibit "D" a statement of all the assets of the estate (Rec., pp. 32-33), both real and personal, which includes no claim of any property in Cambridge or elsewhere in Massachusetts.

It remains to consider, therefore, only the charge that the trustees have acquiesced in an alleged diminution in the estate by the executors, to the extent of about \$100,000, and that, while their first account as trustees showed \$248,569.01 of good promissory notes, their last account showed notes amounting to only \$138,642, accompanied by a diminution in value of the entire estate.

Schedule A of the executors' account in the Massachusetts Probate Court shows, it is true, total assets of \$415,-458.37 (Rec., p. 89), while the eight items receipted for by the trustees, as the amount of the trust estate turned over

to them (Rec., pp. 90-91), foot up \$300,031.71, a difference The acceptance by the trustees from the of \$115,426.66. executors of this \$300,031.71 as the net trust fund, instead of the \$415,458.37 with which the executors charged themselves, constitutes the alleged diminution of about \$100,000 in which the trustees are charged as acquiescing. Upon examination of Schedule A before the Massachusetts Probate Court, however (Rec., p. 89), it will be found that, included in the \$415,458.37 with which the trustees charge themselves, are \$37,593.77 of income or interest on notes, \$1,005 dividends collected, and \$7,218.96 of receipts from real estate, all collected since the testator's death and forming no part of the corpus or principal of his estate; while Schedule B (90) shows that, of the alleged diminution of about \$100,000, \$17,400 was paid to the testator's daughter for her support as provided by the will, \$8,200 was paid to the guardian of the children, for their support after their mother's death; \$49,705.31 were moneys expended in repairs, taxes and prior mortgages upon the real estate, one of these mortgages, for \$15,000, being an encumbrance existing upon the homestead of the testator himself, at the time of his death; that \$6,731.64 were moneys paid for various trust estates held by the testator, and that \$18,800 was the allowance made by the Massachusetts Probate Court to the executors as compensation for the costs and expenses of the tax litigation and for their services as executors, together with sundry smaller sums, also properly and necessarily to be deducted from the total amount of assets received by and charged against themselves in Exhibit A.

Page 40 of the brief, as above stated, charges that, while the first account of the trustees showed as assets \$248,-569.01 of good promissory notes, their last account showed notes amounting to only \$138,642. As shown at page 98 of the record, the schedule referred to at page 40 of the brief as showing assets of \$248,569.01 of good promissory notes was prepared by the principal account clerk in the office of the Register of Wills in the District of Columbia, who assumed that the account of the trustees should begin with the date of their appointment, April 1, 1899, and prepared that schedule accordingly; with the result that the trustees were charged with the funds in the hands of the executors as of that date, which included the \$18,800 allowed them April 25th by the Massachusetts Probate Court, no part of which sum ever came into the hands of the trustees, having been paid to the extent of \$5,800 out of the cash in the hands of the executors, and to the extent of the remaining \$13,000 by notes in their hands, included in the \$248,569,01 of notes shown in Schedule A of the first auditor's report (Rec., p. 22); this error being corrected, in Schedule A of the first auditor's report (Rec., p. 22), by crediting the trustees with the \$18,800, as though the same had been paid by them. These facts were fully developed in the testimony before the auditor in connection with the sixth and final accounting.

With respect to the alleged diminution of the estate during its administration by the trustees, the auditor finds that, when delivered to the beneficiaries, it consisted of real estate and first trust notes well secured, in contradistinction to the negligible character of the estate when it was received by the trustees (i. e., consisting largely of second trust notes), and that it was little less in amount than the estate originally received by them although it had supplied the beneficiaries with an income of \$8,400 per annum during the period of the trust—in addition to the use, rent free, of the homestead, valued at \$35,000, as a winter home, and of Araby Farm, which cost \$15,500 more, as their residence in summer.

Of the eight items constituting the trust fund received

by the trustees from the executors (Rec., pp. 90-91), the first seven comprise cash, household furniture, stocks, etc., with regard to which no question has been raised. The last item consisted of "notes, secured and unsecured, of \$279,839.40" face value, of which notes \$26,907.96 were desperate and \$21,876.82 were worthless (Schedule A, Rec., p. 99), these notes being itemized in Schedules Bb and Bbb, at pages 104 and 105 of the record, making the amount of promissory notes for which the trustees were liable \$231,054.62. The attitude of the appellants toward these worthless notes in the audit and the disposition made of them, is shown in the record at pp. 77, 79, 83.

Of the said \$231,054.62 of promissory notes received from the executors by the trustees for which they are liable, every one is carefully traced and accounted for in the several accountings before the auditor; all were collected, both principal and interest, except seven, namely, the notes of Groff, McLeran, Stein, Crowley, Herr and Thompson, aggregating \$12,832, which were delivered to the beneficiaries in obedience to the decree of July 9, 1909 (Rec., p. 33). It is impossible, therefore, to claim justly, or colorably, that there has been any diminution on note account, for which the trustees are accountable.

On page 72 of the brief for appellants it is stated that the trustees have not accounted for \$39,800 of realty, returned in the executors' inventory to the probate court at Cambridge. The parcels so returned were eight in number, of which three, namely, 1121 15th Street, 441 Franklin Street and the property in St. Louis, Mo., of the value of \$12,300, though standing in the name of the testator, belonged to the Eliza C. Magruder trust, and have been accounted for accordingly (Rec., p. 25). This left four parcels, enumerated in the inventory (Rec., p. 85), all of which are duly accounted for in the record except "Interest in 10 acres of

land at Colorado, \$250," which item, like the Cambridge lots, was never discovered, it must be assumed to the knowledge of the appellants since neither they nor their counsel called for any accounting in respect to them in the sixth and final accounting before the auditor, in which they participated, filed no exception to their omission from the accounting, and made no reference to them in their own division of the assets of the estate which appears at pages 32-33 of the record.

The statement at page 46 of the brief that, in the division, there was delivered to the beneficiaries "personalty valued at \$142,811.73," omits the shares of the Missouri Railroad Company and of the Bigelow Carpet Company, delivered at that time and valued for purposes of division at \$9,373

(Magruder Exhibit D, Rec., pp. 32-33).

With respect to the administration of the real estate by the trustees, only one voluntary purchase, the Araby Farm, was made by them, by the court's direction as above stated, as a summer home for the appellants. A number of pieces of real estate were bought in by the trustees at foreclosure sales in the effort to collect second trust notes held by the testator at the time of his death, the history of the acquisition of these properties, and the disposition of so many of them as were subsequently sold by the trustees, being set out particularly at pages 118-126 of the record, showing the encumbrances, both first and second, which existed upon each of the parcels, the amounts paid in sundry instances to acquire the first trusts in order to protect the second, and the amounts received for such of the parcels as were subsequently sold, these sales in each instance realizing more than their cost to the estate. Fifteen parcels were so sold, supposedly referred to at page 46 of the brief as "14 pieces of real estate which were turned over to the trustees, but seem to have disappeared before the estate was transferred

to the beneficiaries," each of these fifteen parcels having realized more than its cost to the estate as above noted, and as will appear from the detailed report, pages 118-126 of the record.

The aggregate amount paid by the trustees in satisfaction of first encumbrances existing against real estate acquired under these foreclosure proceedings, and including a \$15,000 mortgage left on the testator's homestead at his death, is \$139,989.19 (Rec., p. 128). After applying to this aggregate the proceeds of real estate sold, amounting to \$58,074.84, there remains a balance of \$81,915.05, to be made up to the trustees, out of the proceeds of notes collected. We have the following result:

Notes turned over to the beneficiaries, allot-	
ments A and B (Rec., pp. 32-33)\$	126,938.73
Notes to be held jointly (Rec., p. 33)	14,222.00
Expended in the purchase of Araby	15,500.00
Paid on account of mortgage notes	81,915.65
_	

Total notes accounted for .....

an increase of \$7,522.74 over the \$231,054.64 of notes secured and unsecured (Rec., p. 90) received by the trustees from the executors, after deducting the \$48,784.76 desperate and worthless notes charged off in the first accounting before the auditor, shown at page 116 of the record.

....\$238,576.38

In short, after paying for the beneficiaries an average of \$8,400 a year in their support, besides maintaining for them, free of rent, taxes, repairs and insurance, a city residence valued at \$35,000 and a summer residence which cost \$15,500, the trust estate has been increased, instead of diminished, to the extent of nearly \$8,000.

The foregoing consideration of the charges of maladministration under which it is attempted to be urged, in this court for the first time, under the first exception to the auditor's report, that there was error in the allowance of any compensation made to the trustees, has embraced to a considerable extent discussion of the questions raised by the remaining exceptions, which may therefore be more briefly disposed of.

#### II.

The second exception to the auditor's report, as summarized above, is to the allowance of the commission upon the principal estate *received* by the trustees, instead of upon its net amount as delivered by them to the beneficiaries (Exceptions II, III). This exception is open to the two objections already pointed out and considered at pp. 12-13, *supra*.

#### III.

The third exception is to the failure or refusal of the auditor to consider, for the purpose of determining the compensation to which the trustees were entitled, the fact that Mr. Drury realized, under an allowance of the Massachusetts courts as the compensation of the executors for the two and a half years that they acted in that capacity, \$14,600, which would be at the rate of about 3½ per centum upon the personal estate which passed through the hands of the executors—five per centum being the minimum amount which could have been allowed under the laws of the District of Columbia at that time had the probate and administration taken place in the District, where the domicile was ultimately ascertained to be. Abert's Compilation, p. 29, Sec. 125.

Suppose A and B had been named as executors, and B and C as trustees, under the will; what bearing would the

compensation received by the executors have had upon the commissions or compensation of the trustees? The compensation, in each case, covered a different period of time, and separate and distinct services.

So separate and distinct are the position and duties of executors and trustees, though created by the same will and reposed in the same persons, that, after the passing of the final account of the former, the assets are, as a matter of law, held by them in their latter capacity, for which they are not accountable in their former one, nor are their sureties as executors liable therefor. Seegar vs. State, 6 H. & J., 165-6; Connor vs. Ogle, 4 Md. Ch., 425, 448-9; State vs. Cheston, 51 Md., 377; United States Trust Co. vs. National Savings and Trust Co., 37 App. D. C., 256, 299.

Commissions or compensation paid A as executor have no bearing upon the question of his compensation or commissions as trustee. Whitney vs. Everard, 42 N. J. Eq., 640, 367-8.

# IV.

The fourth exception is to the auditor's refusal to charge the trustees, or the trustee Drury, with the alleged profits made by the firm of Arms & Drury, of which the trustee Drury was a member, in connection with certain real estate mortgages which the trustees purchased from Arms & Drury as investments of the trust funds (Exceptions VI, VII, VIII and IX). These profits, which it was contended before the auditor in the lower courts should be simply considered in determining the amount to be allowed the trustees for their commissions, are urged here as constituting maladministration by them, for which all compensation should be denied; which contention has been discussed at pages 15-20 of this brief.

Exception IX (Rec., p. 130) is to a finding by the auditor that commissions paid by the trustees to Arms & Drury for

the collection of rents, or for the placing of insurance, etc., do not affect the question of compensation justly due to the trustees from the estate. With respect to the rents, inasmuch as all claim to any allowances for commissions to agents for the collection of rents was voluntarily withdrawn by the trustees (Rec., p. 40), and no items of this character were charged against the beneficiaries, so much of the exception as relates to them is doubtless attributable to inadvertence on the part of the exceptants.

The matter of the insurance commissions is almost too small to justify discussion. Its amount, less than \$100 (Rec., p. 78) and under the circumstances of the case, might well fall under the maxim *De minimis non curat lex*, even if the objection were otherwise tenable—especially in view of the fact, shown by the auditor's report, that the trustees have not asked any allowance upon the value of the household effects, the carriages, etc., or on the value of the real estate owned by the testator at the time of his death though requiring their care and attention during all these years, nor for their services in connection with the payment of taxes, insurance charges, repairs or the like upon any of that property. The objection is apparently abandoned, not being urged in the Court of Appeals nor in the brief for appelants here.

## V.

The fifth exception is to the refusal of the auditor to allow commissions or compensation to Alexander R. Magruder as one of the trustees under the will. As above pointed out, in his petition to the court for distribution to him of his share of the estate at this time, he states, in terms (Rec., p. 29), that he has had no active participation in the management of the assets of the estate, nor in the execution of the trusts. What, then, can be the basis of his claim that he should be allowed commissions? Is it

that a part of the compensation justly to be allowed to Maddox and Drury for their services should be taken from them and given to him, who rendered none? Or is it that, over and above the just compensation due to them for their services, something should be taken from the shares of himself and of his sister and given as compensation to him for services, when he admits none have been rendered by him?

The rule is settled, without exception or dissert in any of the authorities it is believed, that, as between trustees, the compensation for the total service performed should be apportioned among them according to their respective shares in the performance of them (Dunn vs. R. R. Co., 32 Fed., 185; Higgens vs. Rider, 77 Ill., 363).

Still in addition, the will in the case at bar expressly provides: "I desire that my executors shall be paid, each for the actual services rendered by himself only, and that they shall not be responsible for each other's acts."

At page 23 of the brief for appellants, it is claimed that the action of Mr. Maddox in suggesting to Alexander R. Magruder the propriety of conveying to his father for life his interest in the Araby Farm, considered, supra, pp. 29-30, "made co-operation betwen the three trustees impossible and the relations between the trustees and their cestuis que trust hostile, and the beneficiaries patiently waited for the time to arrive when the trust could be determined under the provisions of the will." This claim rests only upon that exceedingly flexible foundation, such allegations as parties may choose to put forward in a brief, no particle of evidence in this respect being given by Mr. Magruder or by any witness in the case. The record, on which alone parties first attacked in the appellate court must rely for their defense. and to which alone the court will look for the facts, shows, without the possibility of dispute or controversy (pp. 81-83), that Mr. Maddox filed the petition for Alexander R. Magruder's appointment upon his attaining his majority, pursuant to the provision of the will in regard to his being made a trustee, and procured an order appointing him trustee accordingly; that Mr. Maddox tried to interest him in the matters pertaining to the estate, and suggested to him to come to the District of Columbia and familiarize himself with the management of the real estate, and of the real estate loans of which the estate mainly consisted, but that he declined or neglected to do so, at first went into some business in New York, then removed to Lowell, Mass., persistently remained away from the District, never offered to do anything, or inquired whether there was anything he could do.

### VI.

The sixth exception to the report of the auditor is to an alleged inconsistency upon his part in holding that he was without authority to open up or reform the account of the trustees as stated in the first report of the preceding auditor, although indicating that a tacit understanding had been arrived at by counsel that the account should be reopened, followed by an actual opening and re-examination of it by him.

This exception having been discussed at length in connection with the fifth charge (e) of maladministration, at pp. 30-36, *supra*, we will not protract this brief beyond a brief statement at this point of the facts in regard to the auditor's action concerning this prior report.

The re-opening which it is claimed the auditor should have made was for the purpose of stating the account of the Massachusetts executors, on the ground that the auditor's first report did not comply with the order of reference under which it was made, in that it failed to state the accounts of the executors. This re-opening the auditor held he was without authority to make under the orders of reference under which he was acting, even if the court below was vested with jurisdiction to vacate the decree of the Massachusetts court allowing those accounts, or to require the executor, commissioned by that court to re-state their accounts in this jurisdiction. The allowance of the executors' accounts was by the Massachusetts Probate Court, which allowance, as already shown by the authorities, could not be attacked collaterally in equity, even in Massachusetts (supra, p. 36).

The tacit understanding, referred to in exception XII to the action of the auditor thereunder, as will appear from the report (Rec., pp. 38-9), related only to an apparent double credit for the payment of the \$18,800, once in the executors' accounts in Massachusetts (Rec., p. 90), and again in the auditor's first report (Rec., p. 24), explained by the fact that the accountant who prepared the first account of the trustees began with April 1, 1899, the date of their appointment, and charged them with the \$18,800 then in the hands of the executors, instead of commencing with April 25, 1899, the date when they received the trust assets from the executors correcting the result by crediting them with the \$18,800 as though paid by them to the executors (Rec., pp. 98, 38-9). While allowing this error and its explanation to be gone into under the "tacit understanding" referred to, the auditor refused to reopen the account itself, under the tacit understanding or otherwise for the reasons set forth in his report, at page 39 of the record, and considered at pages 32-6 of this brief.

### VII.

The objection to the auditor's report set forth in Exception XIII (Rec., p. 131), that the appellants were en-

titled under the order of reference and the proceedings before the auditor to an accounting in the District of Columbia Equity Court with respect to the entire estate of the testator, including the property and estate received by the executors, has already been fully considered.

#### VIII.

The final exception, No. XIV, to charging the auditor's fee against the cash in the hands of the trustees, can not require discussion, and seems not to be pressed in this court.

### THE ELIZA C. MAGRUDER TRUST.

The eighth assignment of error, appearing at p. 58 of appellants' brief among other objections already discussed, claims that it was error to discharge the appellees from their office as trustees under their appointment by the court, while at the same time they are retained, with Alexander R. Magruder, as trustees in respect to the Eliza C. Magruder trust.

The declaration of this trust, appearing at pp. 21-22 of the record, shows that, before either the testator's death or the execution of his will, appellants' father with certain other persons conveyed to him the property therein described, in trust for Eliza C. Magruder for life, with remainder to the appellants, the declaration of trust providing that, upon the testator's decease, the trusts should be executed by his executor or executors or whoever should settle his estate. This trust is not referred to in the will, in the Massachusetts proceedings, nor in the decree of April 1, 1899, appointing Drury and Maddox trustees to administer the trusts, "created in and by the said will." It appears, however, that they assumed the management of this trust, embracing their administration of it in the first

and each of their successive accountings before the auditor, including their sixth and final account as trustees under the will (Rec., p. 112)—the appellant Alexander R. Magruder, however, taking no more part in the administration of that trust than in those created by the will. In the final decree of the Equity Court (Rec., p. 132), which overruled the appellants' exceptions to the auditor's report and directed distribution in accordance therewith, it is added that, "upon their filing in this cause their vouchers, showing such distribution by them, the said Samuel A. Drury and Samuel Maddox be, and they hereby are, discharged of and from their said office as trustees under their said appointment by the court in this cause," which appointment as above noted was without any reference to the Eliza C. Magruder trust. In the Court of Appeals, appellants, nevertheless, argued that this provision of the decree of the Equity Court was erroneous, in that it discharged the appellees also, as trustees of the Eliza C. Magruder trust, with respect to which objection the Court of Appeals said (Rec., pp. 164-5): "It is evident that the court in entering the decree did not intend then and there to terminate the administration of that trust, but the form of the decree may be objectionable as warranting the construction given it by the appellants. The case has not been finally closed in the Equity Court, and its power to correct the decree in that respect is fully recognized. \* \* \* So far as the Eliza C. Magruder trust is concerned, the cause will be remanded with leave and direction to the court to amend the decree in so far as it may relate thereto, and take such final action regarding that trust estate as may be expedient and proper."

Inasmuch as the final decree of the Equity Court (Rec., p. 132) discharged the appellees only "of and from their said office of trustees under their said appointment by the

court in this cause," and since the order appointing them trustees in this cause was, only, "to perform the trusts created in and by said will" (Rec., pp. 16-17), it would seem that the objection of the appellants in the Court of Appeals now under consideration was without merit; but in any event the equity decree as modified by the Court of Appeals leaves nothing to which even strained objection can be taken.

At p. 51 of the brief for appellants it is stated by way of objection to the compensation of the trustees that their services were of the usual and commonplace kind, "obviously well within the competency of any real estate broker and real estate agent of average ability, skill and experience." The character of the services required and rendered are summarized by the auditor at pp. 45-6 of the record, as to the accuracy of which summarization there is no ground for dispute or controversy in the record. And see opinion of the Court of Appeals, Rec., pp. 158-9. At p. 55 of the brief for appellants, the trustees are charged with "refusal to account for the early period of their trusteeship," the only foundation for which imputation is the refusal, not of the trustees, or of either of them, but of the auditor, sustained by both the lower courts, to re-open the accounts, not of the trustees, but of the executors, duly rendered to and passed by the Massachusetts Probate Court, and in the absence of any suggestion in the pleadings of attack upon that account, even if the subject of collateral attack in the District of Columbia.

Also at p. 55 of the brief, Mr. Maddox is charged with having attempted "to destroy a part of the trust," the foundation for which charge is, only, his suggestion to Alexander R. Magruder of the propriety of conveying his interest in Araby Farm to his father for life, in view of the fact that the father, in sickness and the apprehension

of death, had conveyed his inheritance to the testator in trust for the appellants.

It is respectfully submitted that there is no error in the decree below, and that it should be affirmed.

J. J. DARLINGTON, Solicitor for Appellecs.

## MAGRUDER v. DRURY AND MADDOX, TRUSTEES.

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1.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 17. Argued October 27, 1914.—Decided November 30, 1914.

On appeals from the Court of Appeals of the District of Columbia taken under the statutes in force before the adoption of the Judicial Code, this court reviews only the decree of that court, and objections in the lower courts not brought forward in the Court of Appeals cannot be considered here.

On an appeal from the Court of Appeals of the District of Columbia

## Argument for Appellants.

alleged errors not of a fundamental or jurisdictional character which were not presented to that court for consideration or which were waived expressly or by implication cannot be regarded as before this court.

An allowance of commissions to trustees of an estate in the District of Columbia made by the auditor and affirmed by both of the courts of the District will not be disturbed by this court. Barney v. Saunders. 16 How. 535.

The decree of the court which has acquired jurisdiction of an estate and settled an account cannot be collaterally attacked; and so held in a case where the will was probated in Massachusetts and the executors accounted but turned over the assets to trustees appointed in the District of Columbia after a finding that testator was not a resident of Massachusetts.

Where an account has been verified by oath and duly presented to, examined by, and passed on, by the court, the decree cannot be regarded as one based only on consent and attacked collaterally in the courts of another jurisdiction under the rule that a trustee's consent cannot work to the prejudice of the beneficiaries.

A trustee can make no profit out of his trust, and even though the estate is not a loser, and the commissions no more than the services are worth, a trustee may not participate in commissions of his own firm on transactions with the estate.

37 App. D. C. 519, affirmed in part and reversed in part.

The facts, which involve the rights and duties of trustees of an estate, are stated in the opinion.

Mr. Nathaniel Wilson for appellants:

The trustees' failure to account fully in this cause, and the futility of their attempt to diminish their accountability by obtaining the Massachusetts probate decree of April 25, 1899, was not cured by acquiescence.

The trustees are accountable for diminishing the estate.

The allowance of the probate account concluded nothing except the executors' discharge in Massachusetts.

The failure to account is important; the transactions were numerous.

The trustees failed to account in this cause for the specific fund of \$18,800, which they withdrew from the

trust funds, and then procured to be allowed to the executors by the Massachusetts probate decree of April 25, 1899.

The trustees are accountable for the profits realized by Mr. Drury from sales of notes to the trust estate.

The appellees seek to separate the profits from the dealings with the trust estate.

It is not clear that the trust estate lost nothing.

The performance of the trust imposed upon the trustees by the decree of their appointment is not completed, because the "Eliza C. Magruder trust" remains unexecuted, and the trust property remains in the possession of the trustees.

The allowance of compensation to the trustees was erroneous.

The services were not of a character to merit the amount allowed.

The proportion or percentage of compensation was arbitrary and not based upon any evidence.

The trustees are entitled to no compensation whatever because of the maladministration of the trust.

In support of these contentions, see Barney v. Saunders, 16 How. 535; Bay State Gas Co. v. Rogers, 147 Fed. Rep. 557; Blake v. Pegram, 109 Massachusetts, 541; Findly v. Pertz, 66 Fed. Rep. 427; Dallinger v. Richardson, 176 Massachusetts, 77; Jackson v. Reynolds, 39 N. J. Eq. 313; Jarrett v. Johnson, 216 Illinois, 212; Mallory v. Clark, 9 Abb. Pr. R. (N. Y.) 358; Mallery v. Quinn, 88 Maryland, 38; Matthews v. Murchison, 17 Fed. Rep. 760; Michoud v. Girod, 4 How. 503; Miller v. Holcombe's Ex., 9 Grat. (Va.) 665; Pence v. Langdon, 99 U. S. 578; Plumb v. Bateman, 2 App. D. C. 156; United States v. Carter, 217 U. S. 286; White v. Sherman, 168 Illinois, 589.

Mr. J. J. Darlington for appellees:

The Massachusetts order, allowing executors' accounts and compensation, is not open to collateral attack.

Argument for Appellees.

The executors' compensation, as claimed and stated, was proper.

The Massachusetts decree was properly treated as con-

clusive here.

The auditor's refusal to reopen the executors' accounts in Massachusetts or former audits in the District of Columbia, was proper.

The allowance of five per cent on principal and ten per

cent on increase was proper.

No question of alleged maladministration, as ground for denial of all compensation, is in the record or raised in the court below. The record shows that one of the trustees was more concerned for interests of a friend than for those of his cestui que trust. There was no combination by the trustees and the guardian to control and use the trust estate. There was no diminution of the estate by the trustees.

In support of these contentions, see Abbatt v. Bradstreet, 85 Massachusetts (3 Allen), 587; Barney v. Saunders, 16 How. 535, 541, 542; Boone v. Chiles, 10 Pet. 171; Carneal v. Banks, 10 Wheat, 181; Commonwealth v. Cain, 80 Kentucky, 318; Connor v. Ogle, 4 Md. Ch. 425, 448, 449; Courtney v. Pradt, 135 Fed. Rep. 218; S. C., 160 Fed. Rep. 561; Dallinger v. Richardson, 176 Massachusetts, 81; Dexter v. Arnold, 2 Sum. 108; Dunn v. Railroad Co., 32 Fed. Rep. 185; Foster v. Goddard, 1 Black, 518; Green v. Bishop, 1 Cliff. 186, 191; Goodrich v. Thompson, 4 Day, 215; Higgens v. Rider, 77 Illinois, 363; Iverson v. Loberg, 26 Illinois, 180; Jennison v. Hapgood, 7 Pick, 1; Jones v. Herbert, 2 D. C. App. 485, 496; Lewis v. Parrish, 115 Fed. Rep. 285; Magruder v. Drury, 37 D. C. App. 519, 537; Paine v. Stone, 10 Pick, 75; Reynolds v. Jackson, 31 N. J. Eq. 515; Richardson v. Van Auken, 5 D. C. App. 209; Railroad Co. v. Gordon, 151 U. S. 285, 290; State v. Cheston, 51 Maryland, 377; State v. Roland, 23 Missouri, 95; Seegar v. State, 6 H. & J. 165, 166; Story v. Livingston, 13 Pet. 359, 366; Thompson v. Maxwell, 95 U. S. 391, 398; U. S. Trust Co. v. National Savings Co., 37 App. D. C. 296, 299; Vaughan v. Northup, 15 Pet. 1; Walsh v. Walsh, 116 Massachusetts, 377; Whitney v. Everard, 42 N. J. Eq. 640; Abert's Compilation, p. 29, § 125.

Mr. Justice Day delivered the opinion of the court.

William A. Richardson, for some years before his death Chief Justice of the Court of Claims of the United States. died at Washington, D. C., October 19, 1896. By his last will and testament, dated August 9, 1895, he described himself as "Chief Justice of the Court of Claims at Washington, a citizen and inhabitant of Cambridge, in the County of Middlesex and Commonwealth of Massachusetts, and having property in said County." By his will he appointed his brother George F. Richardson, of Lowell, Massachusetts, and Samuel A. Drury, of Washington, D. C., as executors and trustees. The will was probated in the Probate Court of Middlesex County, Massachusetts. on October 28, 1896. It appears in the record that the deceased had a little real estate in Massachusetts, but the main portion of his estate was, and always had been, in the City of Washington. The probate of the will in Massachusetts seems to have been in deference to the expression in the will as to his place of residence. Subsequently, and upon certain proceedings being instituted to enforce taxation in Massachusetts of the estate in the hands of the executors, the Supreme Judicial Court of Massachusetts held that the actual residence of Mr. Richardson could be inquired into in that proceeding, and upon the facts shown it was in the District of Columbia. Dallinger v. Richardson, 176 Massachusetts, 77. That case grew out of the imposition of personal taxes amounting to seven thousand five hundred dollars annually on the assets of the estate. As this would have nearly exhausted the income of the

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estate and cut off the support of the beneficiaries under the will, a bill for injunction was filed in this case in the Supreme Court of the District by the father in behalf of the present appellants, who were the beneficiaries under the will. An amended bill was subsequently filed, having for its object an injunction against the executors from paying out of the estate any taxes in the State of Massachusetts. it being stated that, notwithstanding the recitals of the will, William A. Richardson's place of residence and last domicile was in the District of Columbia, where the assets and personal securities of the estate were in the keeping of Samuel A. Drury, also a resident of the District of Colum-In addition to the injunction, the bill prayed an account of the property of the estate which had come into the hands of the executors under the will, and that they might be required to file an account from time to time. Mr. George F. Richardson, one of the executors, being a resident of the State of Massachusetts, and declining to submit to the local jurisdiction, the amended bill was filed against Samuel A. Drury alone. The answer of Drury stated that he had the custody and control of the assets and personal securities, and expressed his willingness to account in the court or in any other jurisdiction in that behalf for the moneys received by him as executor and trustee. Such proceedings were had that, on April 1, 1899. a decree was made continuing the restraining order theretofore made in the case, and finding that the late William A. Richardson was last domiciled in the District of Columbia, where the beneficiaries lived, and it was ordered and decreed that Samuel A. Drury and Samuel Maddox, both of the District of Columbia, be appointed trustees to perform the trusts created in the will, and they were "authorized and empowered to receive from the executors named in said will all the property whereof the deceased died seized and possessed, provided, nevertheless, that the said Samuel A. Drury and Samuel Maddox shall first give separate bonds in the penal sum of Twenty-five thousand dollars, each, with one or more securities to be approved by this Court, conditioned for the faithful discharge of their duties as such trustees." Some five reports were made by the auditor to whom the matter was referred to take accounts, and various proceedings were had, which are fully set out in the opinion of the Court of Appeals in this case (37 D. C. App. 519). It is enough for our purposes to state that the proceedings resulted in an order of reference to the auditor to state the account of the trustees. This order was made on January 17, 1909. The auditor named having died, a further order of reference was made to another auditor to "state the final account of the trustees and the distribution of the trust estate in their hands, and report such commission or compensation to the trustees as may be appropriate and proper." To this report certain exceptions were filed by the present appellants. Upon final hearing, a decree was entered by which these exceptions were overruled, and the Court of Appeals sustained this action of the Supreme Court (37 D. C. App. supra). Hence this appeal.

The argument has taken a wide range, and questions are discussed which are not embraced in the exceptions filed to the auditor's report which was the basis of action in the courts below, and in the Court of Appeals that court dealt with only three exceptions, stating that a number of exceptions were entered to the report, and that those relied upon in that court related to the allowance of a five per cent. commission on principal and ten per cent. on income; to the \$18,800 item allowed by the Massachusetts court; and to alleged profits made by the trustees in the purchase of notes for reinvestment.

Under the statute in force at the time of this appeal, owing to the amount involved, the decision of the Court of Appeals might be brought by appeal in review before this court. This court therefore sits as an appellate court

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for the purpose of reviewing the decree of the Court of Appeals, and that is the extent of the jurisdiction here. Original objections to the auditor's report and the decree of the Supreme Court, not brought forward in the Court of Appeals, cannot be made here. Alleged errors not of a fundamental or jurisdictional character, which were not presented to the appellate court for consideration, and which were waived, either expressly or by implication, will not be regarded as before this court. Montana Railway Co. v. Warren, 137 U. S. 348, 351; Gila Valley Railway Co. v. Hall, 232 U. S. 94, 98; Grant Bros. v. United States, 232 U. S. 647, 660. We shall then consider the assignments of error which were brought to the attention of the District Court of Appeals.

First, as to the allowance to the trustees of five per cent. commission on the principal, and ten per cent. on the income. As to this allowance, the auditor made a lengthy finding of fact, setting forth in detail the services rendered by the trustees over a period of ten years, finding, as to the character of the estate, that the great bulk thereof was second trust notes of small amounts, as to which the auditor says that the transactions were almost innumerable, the total number of notes approximating three thousand, and he sets forth in detail other services involving care of the real estate, looking after the repairs of the property, acquiring parcels of real estate, and the sale thereof, and saving in conclusion that he had no hesitancy in finding that the trustees were well entitled to the commissions allowed. This allowance met with the approval of both the District Supreme Court and the Court of Appeals, and seems to have the sanction of an earlier decision of this court, where it was said that such allowances were customary in Maryland and the District of Columbia. Barney v. Saunders, 16 How. 535, 542. We are not therefore prepared to disturb the decree of the courts below in this respect.

The next exception involves the allowance of the item of \$18,800.00 in the Probate Court of Massachusetts. and charging the trustees with the balance of the estate after that allowance had been made. It appears that the executors Richardson and Drury appeared on April 4, 1899, in the Massachusetts Probate Court and by petition set forth that they had been appointed and had given bond and due notice of their appointment as executors of the will of William A. Richardson; that there was not at the time of the grants of the letters testamentary, and had not been since, property belonging to the testator in the Commonwealth of Massachusetts; that since the granting of letters testamentary Isabel Magruder, the only surviving child and heir at law of the said testator had deceased, and that under and by the terms and provisions of said will it was provided that upon her decease the property of the testator should be held by the executors of said will for the benefit of the two minor children surviving the said daughter, namely, Alexander Richardson Magruder, of the age of sixteen years, and Isabel Richardson Magruder, of the age of about thirteen years: that these children who were interested as beneficiaries in the trusts created by the will, at the time of the probate thereof and ever since had resided at Washington, in the District of Columbia; that Samuel Maddox and Samuel A. Drury had been appointed by the Supreme Court of the District of Columbia trustees for said minors, to carry out the provisions of said will in behalf of the said minors. and that Alexander F. Magruder had been appointed guardian of said minors; and they further represented to the court that William A. Richardson was not at the time of his decease a resident of Massachusetts, but of the District of Columbia, and that all the parties in interest under the will, at the time of the probate thereof, lived in Washington, as they had since and did then. They represented that the will should have been probated 235 U.S.

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at Washington, in the District of Columbia, but either by accident or mistake, probate in the Probate Court of Middlesex County, Massachusetts, was had, and they asked an order that they be authorized to pay over the trust funds to the trustees appointed by the Supreme Court of the District of Columbia, and that upon the payment of such funds to such trustees they be discharged

from further liability.

A decree was entered in the Probate Court of Massachusetts on April 11, 1899, wherein it was found that by the decree of the Supreme Court of the District of Columbia, dated April 1, 1899, Samuel Maddox and Samuel A. Drury had been duly appointed trustees to perform the trusts of the will, and that the beneficiaries were residents of Washington, and that the guardian of the minors had signified his consent to the granting of the petition, and that the laws of the District of Columbia secured the performance of the trusts, and Richardson and Drury as executors, were authorized to pay over the trust funds to Maddox and Drury, as trustees. On April 25, 1899, in the same Probate Court, Richardson and Drury, as executors, filed their first and final account, in which they charged themselves with property in the aggregate of \$415.458.37, and asked to be allowed sundry payments and charges. This account was endorsed with a request for its allowance, signed by Alexander R. Magruder and Isabel R. Magruder, by their guardian, Alexander F. Magruder, and by Maddox and Drury, as trustees. On April 25, the Probate Court made the following order: "The foregoing account having been presented for allowance, and verified by the oath of the accountant, and all persons interested having consented thereto in writing, and no objection being made thereto, and the same having been examined and considered by the court: it is decreed that said account be allowed." The schedules attached show the property and the payments, charges, losses and distributions, among others the item of \$18,800.00, to which exception is made. This item states: "Expense of administration, including care of property, the payment of debts, the making of final account, the collection of notes amounting to \$226,607.54, the investment in trust notes of \$166,958.21, the collection from interest and other sources of \$58,168.94, the payment of about \$50,000 for repairs on real estate, the taking up of prior mortgages, taxes, etc., including also the payment of moneys to Isabel Magruder and to Alexander F. Magruder, the guardian of their minor children, counsel fees incurred in the defense of suits for taxes in Massachusetts and for counsel fees in Washington, etc., \$18,800.00."

The auditor held that he had no authority to disregard or change this item of credit; that the same had been included in the reports of his predecessors and confirmed by the court; and that the allowance, having been made in the Probate Court of Massachusetts, was not open to

review.

The Court of Appeals of the District of Columbia, in the course of its opinion in this case, states that the appellants contended that there was no jurisdiction in the Probate Court of Massachusetts to probate the will, a position which counsel for the appellant in this case disclaims in his brief filed herein, and says that the contention is that the order and decree in Massachusetts was not intended to be operative to diminish the accountability of the executors and trustees to the District of Columbia court. But we do not so interpret the proceedings. The account was filed in the Massachusetts court; and, the record recites, was examined and considered by the court and duly allowed. This order, read in connection with the rules of the Massachusetts court set out at the head of the account, stating the authority of the court to allow reasonable expenses and compensation, shows that it was the intention of the Probate Court to make an 235 U.S.

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allowance including such expenses and compensation. Apart from the concession of the jurisdiction here made, we have no doubt that the Massachusetts court, on the presentation of the will, had the right to determine its jurisdiction to receive and probate the same, and upon ordering the property turned over to the trustees appointed in the District of Columbia, to settle the account and fix the compensation of the executors and order the balance turned over to the trustees. True, the Massachusetts court held, in the case of Dallinger v. Richardson, 176 Massachusetts, 77, supra, that Richardson was not a resident of Massachusetts. In the course of the opinion in that case, the court points out that, for the purpose of the tax question, the matter of residence was not foreclosed by the adjudication of the Probate Court, whether in accordance with the truth or not.

It is well settled that the decree of the court which has acquired jurisdiction of an estate and settled an account cannot be collaterally attacked, Jenison v. Hapgood, 7 Pickering 1, 7. In that case it was held that what assets came into the executor's hands, what debts he had paid, and so of every matter properly done or cognizable in the Probate Court, the judgment of that court is conclusive. See also Abbott v. Bradstreet, 3 Allen, 587. There was no attempt to probate the will in the District of Columbia, in which event the finding of the fact of domicile in the proceedings in Massachusetts would not have been conclusive here. Overby v. Gordon, 177 U. S. 214. trustees were authorized to receive the assets from the The Probate Court in Massachusetts, and executors. no other court, had authority to settle the executors' accounts and determine their compensation. Vaughan v. Northup, 15 Pet. 1. We cannot agree with counsel for the appellant that the order of the Probate Court was based upon consent only, and that this is a case for the application of the rule that the trustees' consent to such a decree cannot work to the prejudice of the beneficiaries of the trust. Whether the guardian might give such consent, we do not find it necessary to decide, for the decree shows that the account was presented, verified by the oath of the accountants, and that it was examined and considered by the court.

The next exception involves the allowance of commissions on the notes purchased from Mr. Drury's firm. The contention before the auditor was that one trustee had received compensation in connection with the handling of these investments, and that that should be taken into account. As to this exception, the auditor finds that "the fact clearly appears from the testimony that Arms & Drury as real estate brokers, made loans on trust notes. upon which loans they were paid by the borrowers a commission ranging from one to two per cent., according to the circumstances of the case, many being building loans; that subsequently as notes of the trust estate were paid off Mr. Drury would reinvest the monies of the estate in trust notes held by Arms & Drury, paying the face value and accrued interest on the notes so purchased." As a matter of law, the auditor concluded: "No profit was made by the firm of Arms & Drury on the sales of the notes to . . . The transactions of Arms & Drury with the trustees were in the regular course of their business, in which they had their own monies invested. They cost the estate not a penny more than if the transactions had been with some other firm or individual. If the firm of Arms & Drury, out of their own monies, made loans on promissory notes, upon which loans were paid by the borrower the customary brokerages, those were profits on their own funds, in which this estate could have no interest, and in which it could acquire no interest by reason of the subsequent purchase of those notes by the trustees for their real value, any more than could any of the purchasers of such notes from Arms & Drury claim such an 235 U.S.

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interest. No charge of malfeasance or misfeasance is made against the trustees or that by reason of these transactions the trustees benefited in any manner out of the money of this estate. On the contrary, the relation of the firm of Arms & Drury to Drury and Maddox, trustees, benefited the estate, by enabling the trustees at all times to make immediate re-investment of its funds, without loss of income, and by enabling the trustees to at all times readily procure re-investments without payment of brokerage, a brokerage not uncommonly charged the lender for placing his money, as well as the borrower for procuring his loan in times of stringency. The application of the well known rule in equity should rather, therefore, be in favor of the trustees than against them with respect to these transac-The objection narrows itself to a claim that Drury by reason of his position as trustee, should in addition to the benefit of his valuable services, commercial knowledge. and business acumen, make the estate a gift of profits on his individual monies, to which the estate is in no wise entitled, and to which it could not make a semblance of reasonable claim, had the trustees been other than Drury or the agents of the estate been other than Arms and Drury." This view seems to have met with the approval of the Supreme Court, and a like view was taken by the Court of Appeals of the District of Columbia, (37 D. C. App. 519, supra).

It is a well settled rule that a trustee can make no profit out of his trust. The rule in such cases springs from his duty to protect the interests of the estate, and not to permit his personal interest to in any wise conflict with his duty in that respect. The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity. "It therefore prohibits a party from purchasing on his own account that which his duty or trust requires him to sell on account of another,

and from purchasing on account of another that which he sells on his own account. In effect, he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buyer on his own account, are directly conflicting with those of the person on whose account he buys or sells." *Michoud* v. *Girod*, 4 How. 503, 555.

It makes no difference that the estate was not a loser in the transaction or that the commission was no more than the services were reasonably worth. It is the relation of the trustee to the estate which prevents his dealing in such way as to make a personal profit for himself. The findings show that the firm of which Mr. Drury was a member, in making the loans evidenced by these notes, was allowed a commission of one to two per cent. This profit was in fact realized when the notes were turned over to the estate at face value and accrued interest. The value of the notes when they were turned over depended on the responsibility and security back of them. When the notes were sold to the estate it took the risk of payment without loss. While no wrong was intended, and none was in fact done to the estate, we think nevertheless that upon the principles governing the duty of a trustee, the contention that this profit could not be taken by Mr. Drury owing to his relation to the estate, should have been sustained.

We find no other error in the proceedings of the Court of Appeals, but for the reason last stated, its decision must be reversed, and the cause remanded to that court with directions to remand the cause to the Supreme Court of the District of Columbia for further proceedings in accordance with this opinion.

Reversed.